

## INTRODUCTION

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## **THE BACKGROUND AND PURPOSE OF THE FOSTER CARE COURT IMPROVEMENT PROJECT (FCCIP)**

Prior to the 1970's, juvenile and family courts were expected only to determine whether a child had been abused or neglected and, if so, whether the child should return home under the supervision of the Department of Social Services or be placed in foster care. In the mid-1970's, child advocates became concerned about what was later labeled "foster care drift"- the placement of children in foster care for years, with no oversight by the courts or monitoring of their care by child welfare agencies.

### **Overview of P.L. 96-272**

In 1980, Congress enacted Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980. The purposes of this legislation were to: (1) improve the quality of care provided to children in foster care, (2) reduce the number of removals of children from their own homes for placement in foster care, (3) return children from foster care to their own homes as soon as conditions in their homes permitted, and (4) facilitate the adoption or other permanent placement for those children who could not or should not be returned to their homes.

The requirements of P.L. 96-272 transformed juvenile courts having a far more active role in the decision making process in child abuse and neglect cases. Courts now were required to determine not only whether the child was maltreated but also whether efforts offered to families by social services were "reasonable" under the circumstances and to ensure that timely permanency planning decisions were achieved and procedural safeguards were provided. In addition, courts were required to conduct reviews every eighteen months.

Since 1980, federal and State law continues to be revamped and refined in an effort to give clearer direction to social service agencies and to the court. At the same time, the child welfare caseload rose greatly, the number of hearings and the number of persons required to be present increased, and the problems of poverty, violence and drug abuse exacerbated the situation. Ultimately, courts have been left with an ever increasing burden, without an increase in resources.

### **Federal Grant to the States**

As part of the Omnibus Budget Reconciliation Act of 1993, also known as the Family Preservation and Support Act, Congress authorized \$35 million over a period of four years as grants to enhance the judicial administration of cases that involve foster care. Under this grant, each participating state is to (1) conduct an assessment of how its courts are handling child abuse and neglect cases (in Maryland that is Child in Need of Assistance (CINA), Termination of Parental Rights (TPR) and subsequent Adoption cases); (2) develop a plan to improve the judicial administration of these cases; and (3) implement the plan.

The State of Maryland received in March of 1995 \$102,123 to conduct the assessment and develop

the improvement plan and \$193,121 for each of the following three years to implement the plan's recommendations. A match of 25% is required for each year of the implementation phase. The match can be in kind. This report is the result of that assessment.

## **PROJECT RESPONSIBILITY AND THE ESTABLISHMENT OF THE FCCIP ADVISORY COMMITTEE**

### **Federal Guidelines**

Federal guidelines mandated that only the highest state court in a state was eligible to apply for Court Improvement Project funds. Such an application had to contain a timetable, budget, and methodology for conducting the assessment. In addition, the State child welfare agency and foster care citizen review board were required to certify that both agencies were provided with an opportunity for review and comment. Also required were assurances that grant funds not needed for the assessment would be used to implement recommended changes and that grant funds would not supplant other State or local funds used for similar purposes.

In order to fulfill these federal requirements and to develop collaboration with other organizations and individuals responsible for promoting and protecting the well-being of children and families in the foster care process, the Foster Care Court Improvement Advisory Committee was formed by then Chief Judge Robert C. Murphy, who appointed Judge Patrick L. Woodward of the District Court for Montgomery County as Chairperson. That Committee has met a total of sixteen times over the last three years.

### **Composition of the Committee**

Members of the Committee have included Judges Richard H. Sothoron, Jr., Tevette S. Price, Nancy B. Shuger, and Lee M. Sislen, Juvenile Master Ann R. Sparrough, the Chairperson and Administrator of the Foster Care Review Board, and representatives of the following persons or organizations that are involved in the treatment of children and families in foster care: the Secretary of Human Resources, the Secretary of Juvenile Justice, the Baltimore City Department of Social Services, the Office of the Attorney General, the Legal Aid Bureau, the Office of the Public Defender, and the Court Appointed Special Advocates program (CASA).

Members of the Committee assisted in the development of the original grant application and participated in designing the assessment portion of the project. As the results of the data analysis were compiled, they were shared with Committee members who then supplied valuable comments and suggestions. Overall, the Committee provided direction for the assessment throughout the project's duration.

## **GOALS OF THE ASSESSMENT**

### **Federal Requirements**

Federal guidelines require that each assessment identify the rules, standards, and criteria imposed pursuant to state laws that establish procedures for courts to achieve safe, timely, and permanent placements for abused and neglected children. In addition, rules and procedures, established under state law or adopted by a state court system on its own initiative, that address such matters as time tables for proceedings and representation of parents and children, also should be identified.

Following the review of statutes and rules, the performance of state courts was to be examined by assessing processes and procedures including the frequency and severity of judicial delays and how often parents and children had legal representation and the adequacy of such representation.

Based upon the assessment, the final report should contain recommendations for (1) changes in state laws, (2) changes in procedures and practices of the state courts or of the state agencies administering foster care, adoption, child welfare and child protective services programs, (3) additional education or training of state court judges, (4) improvements in the selection, compensation, and training of court-appointed legal representatives of parents and children, and (5) improvements in judicial caseflow management.

### **Areas Excluded From The Assessment**

Several aspects of the management of cases of children in foster care were not addressed deliberately. Specifically, the FCCIP did not examine issues relating to the P.L. 95-608 Indian Child Welfare Act of 1978. Its exclusion from the report was based upon conversations with employees of the Department of Human Resources who were, at the time of the assessment, in the process of developing regulations to conform to the Act. Possible changes in court procedures will be considered upon issuance of the Department of Human Resources regulations.

Another area excluded from the assessment was the CINA review process. The implementation of Chapters 595 and 596, Acts of 1996, which required courts to conduct review hearings every six months instead of the previously required eighteen months, lessened the suitability of the review process for analysis. The implementation of recommendations within the report requiring more specific data collection regarding review hearings should be considered as being of the highest priority.

### **Primary Goal**

Finally, unspoken in the recommendations, but strongly implied in the emphasis on the effective generation of information in a timely manner, is the desire that the enormous efforts undertaken to obtain information in the assessment need not be repeated at some future date. Only through the introduction of new data collection systems designed to assess performance and with new methods

to provide administrators with rapid statistical feedback will such a need not recur. In short, then, the primary goal of this assessment is to ensure that it does not have to be done again.

## PROJECT METHODOLOGY

### Review of Statutes

The first step in the assessment process was to conduct a comprehensive review of Maryland statutes and rules as they relate to Termination of Parental Rights cases and to CINA cases. TPR cases are governed primarily by Maryland Ann. Code, Family Law Art. §5-301 et seq. CINA cases are covered by Maryland Ann. Code, Cts & Jud. Proc. Art. §3-801 et. seq. These statutes were compared with federal law, national standards promulgated by the National Council of Juvenile and Family Court Judges (NCJFCJ), as well as other national and out-of-state publications. The conclusion of this review was that Maryland's statutory scheme is consistent with federal requirements and suggested time-line standards recommended by various organizations. What was left to be determined was whether, in actual practice, Maryland courts are in compliance with these requirements.

### Interviews with Court Personnel

Interviews were conducted with court personnel from every jurisdiction in Maryland. There are 24 jurisdictions in Maryland. Judges and masters participated in on-site interviews in all counties except Garrett (where telephone interviews were conducted) and Queen Anne's counties. Additional on-site interviews were conducted with court personnel, including clerks of court, juvenile clerks, adoption clerks, assignment clerks, court administrators, and Differentiated Case Management coordinators in all jurisdictions with the exceptions of St. Mary's and Garrett counties. During the interviews, questions were asked concerning local practice variations, training needs, and court staffing. Additionally all interviewees were asked for individual comments regarding the processing of CINA and TPR cases in their jurisdiction.

### Intensive Site Visits

**TPR cases:** Site visits were conducted in the eight jurisdictions: Anne Arundel, Baltimore, Cecil, Harford, Montgomery, Prince George's, and Washington Counties, as well as Baltimore City. These jurisdictions were selected because a minimum of ten TPR cases had been completed during FY'95. At each site, a random sample of files were reviewed. Hearings were observed (if possible), and interviews were conducted with judges and other court personnel responsible for processing TPR cases. When possible, discussions also were initiated with attorneys involved in the cases being reviewed. A total of 101 cases were reviewed, approximately 15 hearings were observed, court facilities were examined, and the appropriate court personnel and judges were interviewed. *Note: All TPR site visits were conducted in the equity court prior to the passage of legislation that transferred TPR cases to the juvenile court.*

**CINA cases:** The CINA site visits were conducted in the following jurisdictions: Calvert, Caroline, Harford, Howard, Montgomery, Prince George's, Washington and Worcester Counties, as well as Baltimore City. These sites were chosen because they represent one jurisdiction in each judicial

circuit. Baltimore City, Prince George's County and Montgomery County represent 92% of the original CINA terminations in the sample jurisdictions. During the site visits a statistically significant sample of each jurisdiction's FY'95 original terminations were reviewed. Interviews were conducted with the judges and masters in each jurisdiction who are responsible primarily for the CINA caseload. Hearing reviews were conducted in each of the nine jurisdictions, with the exception of Worcester County. Juvenile clerks in each jurisdiction were interviewed, court facilities were examined and attorneys involved in the cases were interviewed when feasible. The length of time spent in each jurisdiction and the amount of cases reviewed are detailed below.

Circuit/County	Total Number of Cases	Error Rate-10%	Hearing Reviews	Time To Conduct Site Visit
First Circuit Worcester	36	14	0	1 day
Second Circuit Caroline	12	12	1	1 day
Third Circuit Harford	47**	20	7	2 half days
Fourth Circuit Washington	92	33	10	1 day
Fifth Circuit Howard	64	35	7	1 1/2 days
Sixth Circuit Montgomery	365	63	8	3 days
Seventh Circuit Calvert	47	20	6	1 day
Seventh Circuit Prince George's	445	78	12	3 days
Eighth Circuit Baltimore City	2450	275*	30	9 days
TOTAL	3558	550	81	22½ days

\* 5% error rate

\*\* cases filed by family, not by child

## Questionnaires

Separate instruments were developed for TPR judges, CINA judges, CINA masters, juvenile clerks, TPR attorneys and CINA attorneys. After a TPR site visit was conducted, questionnaires were sent to the judges identified during the interviews and to attorneys whose names appeared in the file reviews. During the CINA assessment, questionnaires were sent to, and returned by, the County Administrative Judge in all 24 jurisdictions. Each County Administrative Judge was asked to identify those judicial officers in the county who handle currently or were assigned previously to hear CINA cases. Sixty-seven judges and seventeen masters were identified Statewide. Questionnaires were sent individually to each judicial officer. Forty-two judges (63%) returned surveys, 13 (19%) responded that they did not hear a sufficient number of CINA cases to answer the survey and 12 (18%) did not respond. Fourteen masters (82%) returned completed questionnaires, and one (6%) indicated his CINA experience was not recent enough to be relevant. Two masters (12%) did not respond. At least one response was received from every jurisdiction with the exception of Queen Anne's County.

Questionnaires relating to the processing of CINA cases were returned by the Clerk's Office in all 24 jurisdictions. In September 1996, Statewide training for attorneys representing parties in CINA cases was sponsored by the Maryland Department of Human Resources and the Administrative Office of the Courts. During that training program questionnaires were hand-delivered to 117 attorneys. Additionally, approximately 35 questionnaires were mailed to attorneys who did not attend the program. One hundred and one (66%) of the questionnaires were returned. At least one response was received from every jurisdiction with the exception of Dorchester County.

## **File Reviews**

***TPR cases:*** The methodology employed for the case file reviews involved identifying in each jurisdiction all TPR cases that had been concluded during FY'95. The result of the proceeding was not relevant to identifying the cases. Once the total number of cases in each jurisdiction were identified, a statistically valid sample was reviewed.

A recurring criticism leveled at the court system is how long TPR cases take to complete, with its effect on how long children remain in foster care without a permanent home. Examining the time taken to conclude a case made it possible to examine how long each stage of the process lasted from initial filing through the final disposition.

***CINA cases:*** The methodology used in the CINA file reviews was similar to that used for the TPRs. To capture the steps involved in completing a CINA case, it was desirable cases to look at cases that had reached a disposition or had been closed prior to disposition. FY'95 original terminations for all CINA cases Statewide were chosen. These included cases that were dismissed prior to disposition, as well as cases in which a child was returned home, placed in foster care, or placed in the legal custody of some other person. This process permitted examination of how long it took to complete cases, how long each stage took, who was involved at each stage of the proceedings, what types of information were collected by the court, what types of documents were filed, which judicial officers heard the cases, and what types of decisions were being made.

Difficulties were encountered when trying to establish a methodology for capturing cases that were in the review/permanency planning process. When the 1996 permanency planning legislation (Chs. 595 and 596) was implemented, the Committee decided that data on these cases, though capable of illustrating problems in the system, would not be relevant to the future needs of the foster care system because the requirements for six month reviews, specific permanency planning decisions, and expedited TPR procedures should address some of those concerns. Additionally, the success of this legislation in meeting the goals of expeditious permanency planning for children will need to be evaluated once the legislation has been in effect for a period of time.

**CHAPTER ONE**

**Information in the Juvenile Court**

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## **CURRENT SOURCES OF STATEWIDE INFORMATION**

Statistics on Juvenile Court activity are compiled and maintained by the Judicial Information System (JIS) Unit of the Administrative Office of the Courts.

### **From Automated Jurisdictions**

Automated jurisdictions supply statistical data to the JIS mainframe computer through the following procedures:

- the circuit courts for Howard, Montgomery, and Prince George's Counties submit data by magnetic tape;
- the circuit courts for Anne Arundel and Carroll Counties download information from their AS400 computers directly to the mainframe;
- the Juvenile Court in Baltimore City operates from an AS400 computer and submits a tape to JIS; and
- the civil division in Baltimore City, which handles ongoing TPR and Adoption cases, operates directly from the JIS mainframe.

The Juvenile Court in Montgomery County is in the process of implementing a new automated system that will supply statistical data directly to the mainframe;

### **From Non-Automated Jurisdictions**

The remaining of the jurisdictions in the State collect information manually through the use of case log sheets. The log sheets are submitted to JIS where data entry operators enter the data directly into the mainframe.

The table on the following page illustrates the daily case log sheet currently utilized by the non-automated jurisdictions. With such a variety of submission methods, all of which must have the same data structure and variables, only general court activity can be compiled.

**DATA VARIABLES USED IN THE JIS COLLECTION SYSTEM  
FOR JUVENILE CASES**

TRANSACTION TYPE	CATEGORY	HEARING
1 - Original Filing 2 - Reopened Case 3 - Change/Correction 4 - Update-Hearing/Trial 9 - Termination	1 - Delinquency 2 - Adult 3 - Child in Need of Supervision 4 - Child in Need of Assistance 5 - Guardianship (Termination of Parental Rights) 6 - Adoption	1 - 1st day of a multi-day hearing 2 - Continuation of a multi-day trial or hearing 3 - Last day of a multi-day trial or hearing 4 - One day trial or hearing
DISPOSITION		
A - Jurisdiction Waived B - Dismissed C - Stet D - Probation E - Care and Custody/Committed to the Department of Social Services	F - Care and Custody/Committed to the Department Of Juvenile Justice G - Committed to a Hospital Facility H - Institutional Commitment J - Transferred in, for Supervision K - Transferred out	L - Continued with/without a Finding M - Guardianship Granted (Termination of Parental Rights) N - Adoption Granted X - Other Conclusion or Disposition

A review of the variables listed above indicate that, not only is the information collected of a general nature, but dispositions are clearly weighted toward the collection of information from delinquency cases.

Entries referencing Termination of Parental Rights and Adoption cases were added in 1996 as a result of the transfer of jurisdiction of these cases to the Juvenile Court.



## **PROBLEMS ENCOUNTERED IN IDENTIFYING CLOSED TPR CASES**

The focus of the case file reviews was to be TPR cases that exceeded 180 days among cases closed in the most recently completed fiscal year. Obtaining a list of TPR case numbers, however, involved more detailed analysis than simply reviewing file numbers.

Before October 1, 1996, TPR cases throughout the state were filed as civil cases in the circuit court. Due to similar confidentiality requirements, TPR cases were placed routinely in the same file cabinet with adoption cases. In order to simplify file location, TPR cases were assigned the same type of file designation as adoptions. As a result,

A similar problem was encountered when JIS attempted to produce an elapsed time report for TPR cases. Then, as now, the methodology in the collection of civil case statistics by JIS did not separate TPR cases from adoption cases. Upon filing, clerk personnel in non-automated jurisdictions would place the case number of a TPR or adoption case on a collection sheet and assign the same case designation, "Guardianship/Adoption." As a result, it was impossible for JIS personnel to separate TPR from Adoption cases. The document produced by JIS was, therefore, inclusive of all TPR and Adoption cases filed in the State, consisting of more than 2,500 case numbers.

To isolate the desired TPR cases, extensive research was conducted focusing upon the data available from individual jurisdictions. This research included numerous phone calls to every adoption clerk in the state, visits to larger jurisdictions to access their databases, a review of computer printouts of cases produced by automated systems under the control of local jurisdictions and actual case review of files over a two month period. Through these efforts, the list was narrowed down to 450 TPR cases.

Contact also was made with the Foster Care Review Board and local departments of social services offices and counsel in an effort to obtain accurate case lists. It became evident that neither of these organizations maintained automated records that were accessible based upon the court disposition.

This difficulty can be illustrated by describing efforts undertaken to ascertain an accurate list of closed TPR cases in Baltimore City. The local automated system produced a list of 142 cases closed in FY '95 while the JIS elapsed time case report only listed 56 cases. Of the 86 cases not listed in the report, nine cases were improperly coded (see Appendix A). Eventually, a list was compiled by information supplied by DHR, JIS and the local Court.

In non-automated jurisdictions, it became necessary to ask individual adoption clerks to go through their docket books from the last five years and provide the case numbers for all of their TPR cases during that time period.

## **PROBLEMS ENCOUNTERED IN IDENTIFYING CLOSED CINA CASES**

Upon initiation of the CINA file reviews, the Judicial Information System was again asked to produce a report listing original terminations in CINA cases for FY'95 including the reason for disposition. An elapsed time report was produced but, unfortunately, it did not include the reason for disposition. Also, the elapsed time format created practical difficulties in reviewing the case numbers. Eventually, a report was received consisting of case numbers, each with one of the nine reasons for disposition (see previous table). Unfortunately, this report still could be produced only in an elapsed time format and, as with TPR cases, this data did not match the information received from other sources.

Comparison of the JIS list with information from local jurisdictions, made clear that no Statewide or even systemwide (courts with more than one clerk processing juvenile cases) criteria are being utilized for recording the closure of a CINA case. Juvenile delinquency cases appeared frequently on the JIS printouts, as did cases with dispositions of "stet" or "probation" which are not CINA terms. Some counties (Montgomery and Prince George's) closed cases without a finding or disposition. One jurisdiction (Queen Anne's) added suffixes to cases that were reopened yet closed as original terminations.

Some jurisdictions closed cases according to hearing dates, while others left them open until the order was signed (which could be months later). One county (Worcester) would close a case after shelter care and not open it again unless a CINA petition was filed, while another (Caroline) would leave a shelter care case open and never go back and close it even if a CINA petition was never filed. One jurisdiction (Montgomery) assigned the shelter care petition and the CINA petition separate new case numbers, which are an impression of greater than actual caseload. Most significantly, Baltimore City did not close 90% of its original dispositions.

In Baltimore City, the majority of dispositions reviewed were listed in the QUEST system as "pending further review" which left the case open and never reported as closed to JIS. As a result, both the JIS report and the Annual Report of the Maryland Judiciary underreported Baltimore City CINA dispositions by over 2000 cases. The QUEST system could not locate these cases and the local department of social services and DHR also were not able to produce lists of closed cases with court case numbers.

Information was requested from the Foster Care Review Board as well. The FCRB supplied a list of cases for Baltimore City and Harford County. Many of the FCRB court case numbers did not contain the correct number of digits. Several cases on the list were filed in the 1980's thereby making it impossible for such a case to have an original disposition in 1995. Some cases were entered by ID number and petition number, resulting in double recording. Finally the FCRB list included only those children who entered foster care, not those where shelter care was not requested or was denied.

Additional case review difficulties were experienced due to the practice in some jurisdictions (Carroll, Harford, Wicomico, and Worcester) of filing cases by family rather than by child.

Eventually, in Baltimore City, a random sample of days on the CINA disposition docket was utilized to estimate the total dispositions for the year and develop a statistically significant sample of cases. In all other jurisdictions the juvenile clerk was contacted and, with the assistance of local automated systems in automated jurisdictions, project staff and clerk personnel reviewed cases and verified the accuracy of the reported information, located missing cases, and deleted from the list some cases that were entered erroneously.

All of this activity was dedicated to collecting and correcting information in cases that were closed. To avoid the need to repeat this process at some future date, it is imperative that the maintenance of data be thoroughly revised.

### **Recommendation 1.1 - Clarifying and Enhancing the Collection of Basic Case Statistics - Judiciary**

**Basic case statistics should be reassessed, including the development of clear guidelines as to when Child In Need of Assistance, Termination of Parental Rights, and Adoption cases are to be recorded as filed, terminated and reopened and why these events occurred.**

*The opening or reopening and the closing of a case should be linked to specific court filings (such as the original petition) or a type of disposition that would be listed in the court order. These filings must be pre-defined and (in non-automated jurisdictions) selected by clerk personnel from a list on a revised data collection form dedicated specifically to CINA, TPR, and Adoption cases. Programs in the automated jurisdictions will have to be revised in order to conform to the new standards.*

*Since basic case information regarding TPR cases was revised only recently, the examples provided below apply only to CINA cases. Based upon information collected during file reviews, the following list of variables is proposed for inclusion as part of the new information system for basic case statistics.*

**Original Filing:**

1. *Petition for Continued Shelter Care.*
2. *Petition for Child in Need of Assistance (only in cases initiated as non-shelter care).*

**Original Termination:**

1. *Dismissed by the Court.*
2. *Withdrawn by Department of Social Services.*
3. *Committed to Department of Social Services.*
4. *Committed to Department of Social Services and Department of Health and Mental Hygiene.*
5. *Committed to Department of Health and Mental Hygiene Hospital.*
6. *Committed to Department Social Services and Department Juvenile Justice.*
7. *Committed to Department of Social Services for Relative Placement.*
8. *Committed to Department of Social Services for Placement with a Specific Caretaker.*
9. *Custody/Guardianship to a Relative or other Caretaker.*
10. *Order of Protective Supervision.*

**Re-Open:**

1. *Review Hearing - Permanency Plan.*
2. *Review Hearing - Emergency.*
3. *Review Hearing - Other Review.*

***Terminate (Re-Open):***

1. *Placement Continued.*
2. *Placement Modified.*
3. *Recision of Commitment.*

*Due to its extreme age, it is unlikely that the present Statewide data collection system can be modified sufficiently to conform to Year 2000 standards. Therefore, it is imperative that development of a new automated system, which should contain the new data elements, be completed in sufficient time for extensive testing prior to the end of 1999.*

**Recommendation 1.2 - Responsibility for Revising Terminology.**

**A joint committee, comprised of members of the Committee on Juvenile Law and the Committee on Family and Domestic Relations Law, should be formed to develop specific uniform guidelines regarding the terminology utilized for information collected and maintained by the Judiciary for Child In Need of Assistance, Termination of Parental Rights, and Adoption cases.**

*As part of this process, the Department of Human Resources, the FCRB and all other appropriate agencies, should be consulted regularly. Specific focus should be given to enabling the sharing of information between the new Uniform Court System (UCS) and the new State Automated Child Welfare Information System (SACWIS) under development by DHR.*

**Recommendation 1.3 - Training**

**Upon completion of the reassessment, but prior to the implementation of Recommendation 1.2, training should be provided to the Clerk's employees who process these cases. A revised training manual should be developed and issued. Regional training also should be provided to the Clerk's employees.**

*The importance of accuracy in the collection of data needs to be demonstrated to appropriate clerk and court personnel.*

**Recommendation 1.4 - Reports**

**Following implementation of these recommendations, monthly reports should be provided to local jurisdictions, especially Clerks' Offices, detailing the extent of activity reported by that jurisdiction in the previous month.**

**Recommendation 1.5 - Inventory of Open Cases**

**Upon initiation of Recommendation 1.2, an inventory of open cases existing at that time should be undertaken to validate and in order to conform their status to the guidelines for basic case statistics.**

*This inventory should commence upon implementation of the new guidelines on July 1, 1998 and be completed by June 30, 1999. As much as possible, funding for contractual employees who will undertake this project should be supplied from the Foster Care Court Improvement Grant.*

**Recommendation 1.6 - Clarifying and Enhancing the Collection of Basic Case Statistics - Filing Practice**

**The Standing Committee on Rules of Practice and Procedure should propose, and the Court of Appeals adopt, a rule requiring attorneys representing the local departments of social services to submit for filing a separate Child In Need of Assistance, Termination of Parental Rights, or Adoption petition for each child, rather than one petition for multiple children.**

*This rule change should be accompanied by an amendment to the Fee Schedule eliminating the option of the court to assess filing fees in CINA or TPR cases. In addition, this measure should not preclude efforts by the courts to coordinate hearings of siblings.*

## CHAPTER TWO

### Judges and Masters in the Juvenile Court

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## INTRODUCTION

The creation of the juvenile court was a recognition that children are developmentally different from adults and that those differences should be considered when children are brought before the court. The caseload of the court, including delinquency as well as child abuse and neglect cases, has grown steadily, especially in recent years. With that growth has come an expansion of the authority of the court. In addition to the power to approve the removal of a child from the home, the juvenile court in Maryland has recently been assigned the authority to terminate parental rights. The complexity of the activities brought before the court has also expanded, due primarily to the federal Adoption Assistance and Child Welfare Act of 1980.

### Development of Surveys

The statute governing the assignment and rotation of judges in the juvenile court, Courts Article §3-803, describes a variety of qualifications for assignment that seem to address a number of the issues described above. In order to gain a better understanding of the assignment of judges to the juvenile court, their background, and the extent of available training, surveys were prepared and distributed to judges who were identified as being assigned to the juvenile court.

### **EXPERIENCE AND TRAINING OF JUDGES IN THE JUVENILE COURT**

Under Courts and Judicial Proceedings, Article §3-803, judges assigned to hear juvenile cases should have special experience or training in juvenile cases and the problems of children likely to come before the court.

Questions were submitted to judges assigned to the juvenile court to ascertain the extent of compliance with statutory provisions. The responses from the judges and masters are listed below.

Did you have any special experience in the field of abuse and neglect or foster care in general prior to your handling juvenile cases?

Types of Responses	Judges
Yes	17
No	24
No Answer	1

If you have special experience in the field of abuse and neglect or foster care,

please indicate where you acquired your experience.

Sources of Experience	Judges
Office of the Public Defender	3
Office of the State's Attorney	5
Agency Attorney	2
Private Practice	6
Probation Officer	1
Foster Care Review Board	1

How many years of experience do you have handling CINA cases since becoming a Judge?

Extent of Experience	Judges
Less than one year	6
One to three years	8
Four to six years	5
Seven years or more	20
No Answer	3

Did you receive any training in CINA cases prior to or after you began to hear them?

Types of Responses	Judges
Yes	13
No	29
No Answer	1

If you have received training in CINA cases after appointment,  
please indicate the source of the training.

Sources of Training	Number of Responses
Judicial Institute	5
National Conference of Juvenile and Family Court Judges	2
In-House	1
Unspecified	5

If you have received training in CINA cases after appointment,  
please indicate the extent of the training.

Extent of Training	Number of Responses
Up to one hour	1
One to three hours	5
One day	2
Two days	1
Three days or more	4

Do you receive, or have access to, written materials related to CINA issues;  
such as national publications or appellate decisions?

Types of Responses	Number of Responses
Yes	35
No	6
No Answer	1

The survey results indicate a significant lack of CINA training. It is recommended that the following measures be taken to rectify this situation.

**Recommendation 2.1 - Training of Juvenile Judges and Masters - Initial Assignment**

**Upon notification of such an assignment, the newly appointed judge or master should be provided with both appropriate written materials, including a revised and updated version of the Benchbook, and video instruction programs prior to the beginning of their assignment.**

**Recommendation 2.2 - Training of Juvenile Judges and Masters - Semi-Annual Events**

**The Judiciary of the State of Maryland should initiate, and the Judicial Institute administer, regional single topic training programs that would be scheduled for the afternoon and/or evening. These programs should occur semi-annually.**

**Recommendation 2.3 - Training of Juvenile Judges and Masters - Annual Conference**

**The Judiciary of the State of Maryland should provide for, and the Judicial Institute administer, a yearly conference dedicated to the training of judges and masters in cases involving abused and neglected children. The first annual conference should be scheduled for September of 1998 with funding included as a separate line item in the Judiciary's FY 1999 budget.**

*The content of the conference should include legislative updates, DHR administrative requirements, new federal mandates, appellate decisions, automation, and procedural changes required by new statute and/or rule. Holding the conference in September would allow for a timely review of new legislation prior to the usual implementation date of October 1. Participants should include judges and masters, then hearing, or likely to hear, these cases in the near future, relevant Federal and State officials, and prominent speakers. Upon approval of the budget expenditure at the conclusion of the 1998 legislative session, a planning committee, selected by the Chief Judge of the Court of Appeals, should be appointed.*

## PROCEDURES FOR ASSIGNMENT TO THE JUVENILE COURT

Courts and Judicial Proceedings Article, §3-803 directs the Circuit Administrative Judges whose circuits include Baltimore City, Prince George's County, and any other county in which the juvenile caseload requires, to assign have one or more judges assigned specially to handle juvenile cases. With the exception of Montgomery County, this assignment is made by the Chief Judge of the District Court. All assignments are subject to the approval of the Chief Judge of the Court of Appeals. However, a review of files in the Court of Appeals Clerk's Office contains few requests for approval or orders signed by the Chief Judge authorizing assignment.

One possible explanation, expressed during interviews with various judges, was that the notification yielded little in terms of concrete benefits for the assigned judges. However, with the initiation of new training programs, including the development and dissemination of training materials to newly assigned judges, the need for more specific notification procedures with greater uniformity becomes more understandable.

With respect to the appointment of masters, Courts and Judicial Proceedings Article, §3-813 prohibits appointment of a master for juvenile causes unless the appointment is approved by the Chief Judge of the Court of Appeals. A review of Court of Appeal records, similar to that undertaken for evidence of assignment of judges to the juvenile court, revealed even fewer indications of the appointment of Juvenile Court masters. As with judges, it can be assumed that little in the way of concrete benefits could be anticipated with formal notification of the assignment of a master to the Juvenile Court. Indeed, until a formal request from the Committee on Juvenile Law to the Judicial Institute, masters were not included on the Institute's mailing list for available reference material. It is hoped that this perception can be altered with the inclusion of masters as part of the recommended training programs.

### **Recommendation 2.4 - Assignment Procedures for Judges and Masters**

**Courts and Judicial Proceedings should be amended to include a provision establishing a uniform procedure for circuit Administrative judges to request the assignment of a judge or master to the Juvenile Court.**

*Notification of this request for assignment should take place sufficiently in advance of the assignment to ensure that training materials are provided to the assigned judge in a timely fashion.*

*In addition, procedures for notification of this assignment should include creation of a notification form.*

## **ROLE OF JUDGES AND MASTER**

Many juvenile courts throughout Maryland are characterized by the use of masters rather than judges as hearing officers. Indeed, in several of our larger jurisdictions, the juvenile court is virtually a court of masters, not of judges.

It is important to note, however, that the role of masters tends to differ from jurisdiction to jurisdiction. Of particular interest was the role played by judges in actually conducting CINA hearings. The following table states the number of cases that featured hearings conducted by judges.

Jurisdiction	Total Number of Cases Reviewed	Cases With a Hearing Conducted by a Judge
Harford County	20	4
Howard County	35	3
Prince George's County	78	9
Baltimore City	275	104

The involvement of judges in Baltimore City is proportionally higher due to the full time assignment of a judge to hear contested CINA cases.

This, of course, is not a full reflection of the involvement of judges in CINA cases. Overall, except in orders continuing shelter care or delinquency, judges are required to review the reports and recommendations issued by masters. As the Court of Appeals has acknowledged, the burden placed upon a judge reviewing the report and recommendation of the master is substantial. The findings of fact of a master may involve a review by a judge based upon hundreds of pages of testimony, all without the added enhancement of personally observing witnesses.

In examining the issue of a review by a master in a custody action, the Court of Appeals questioned the advisability of referring contested custody cases to a master (*Domingues v. Johnson* 323 Md. 486 (1991)).<sup>1</sup> The same concern applies in contested CINA cases. In addition, the level of exceptions, which require a judge to, in essence, duplicate the work of a master, must be considered. Therefore, the extent of involvement of judges in hearing juvenile cases should be defined carefully.

### **Recommendation 2.5 -Role of Judges**

The Standing Committee on Rules of Practice and Procedure should propose, and the Court of Appeals adopt, a rule clearly defining the role of Circuit Court judges in the processing of CINA cases.

*Possible criteria for the selection of CINA actions that would be referred to judges could include the following:*

*(A) certain contested adjudicatory and disposition hearings that feature an extensive number of witnesses and/or substantial overall length and complexity.*

*(B) a percentage of new CINA filings, selected randomly by clerks or other administrative personnel, could be assigned in their entirety to a specific trial judge.*

*Regardless of the criteria adopted, careful consideration should be given to the effect of this recommendation on the judicial workload.*

## **RESOURCES FOR THE JUVENILE COURT**

Interviews with judicial and non-judicial personnel indicate serious concerns about the level of resources available to the juvenile court. There is ample reason to believe that resource issues contribute significantly to these delays. Furthermore, the juvenile court faces a substantial increase in workload pursuant to the enactment of Chapters 595 and 596, Acts of 1996. While staffing levels have improved recently with the hiring of additional masters in certain jurisdictions, a full review of the methods utilized in determining staffing levels should be undertaken.

### **Recommendation 2.6 - Adequate Staffing Levels**

**Subject to implementation of recommendations as to new methods of collecting and compiling case statistics, the Judiciary should develop methodology that would define optimum staffing levels in the juvenile court for judges, masters, clerks, and other court staff.**

### **Recommendation 2.7 - Facilities in the Juvenile Court**

**Upon determination of optimum staffing levels in the juvenile court, the Judiciary should conduct a needs assessment of the facilities in the juvenile courts and devise a workable funding mechanism to pay for improvements.**

## CHAPTER THREE

### Representation of Parties

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## RIGHT TO COUNSEL

Maryland law is clear that all parties in CINA and TPR Cases are entitled to counsel, and that this right attaches at the start of the proceedings:

***CINA cases:*** A party in a child in need of assistance proceeding is entitled to the assistance of counsel at every stage of any proceeding under this subtitle [CJ § 3-821(a) & Rule 11-106-53]. A party is a child who is the subject of a petition, the child's parent, guardian, or custodian, and the petitioner [CJ §3-801].

A child's parent, guardian, or custodian in a CINA proceeding is not entitled to the assistance of counsel at State expense unless: (1) the party is the custodial parent or guardian of the child alleged to be in need of assistance, (2) the party is indigent, and (3) the proceeding is a shelter care hearing, an adjudicatory hearing, a disposition hearing, or a review hearing in which the State has moved to remove the child from the custody of the party or the party has moved to regain custody and, due to the presence of complex factual or legal issues, the assistance of counsel is necessary to ensure that the proceeding does not entail the risk of erroneous deprivation of custody [CJ 3-821(b)].

The assessment, however, revealed that this law is not being followed consistently throughout the State. As will be demonstrated in a later section, the process of appointing attorneys for indigent parents in most counties results in virtually no representation for parents at shelter care hearings and again at review hearings. Parents who do not qualify for the Office of Public Defender representation will likely be unrepresented. The assessment found that the local department of social services was represented 100% of the time at all stages of the proceeding and that attorneys were always appointed for children, although in some of the smaller counties, the shelter care hearing might be held without the child's attorney being present.

### **Recommendation 3.1 - Broadening Parent Access to Representation**

**CJ §3-821 (b) (1) and (3) should be modified or removed. The custodial relationship between the parent and child should be eliminated as a factor in deciding whether or not the parent is entitled to representation. Custodial agreements change frequently during these proceedings and parents should have equal access to representation. Additionally, attorneys for parents should be available to represent those seeking representation at the shelter care hearing and at review hearings.**

### **Recommendation 3.2 - Use of Reduced Fee Panels**

**The Judiciary should be encouraged to look to other sources of attorneys available for the representation of parents who fall just above the indigency guidelines. Services of reduced fee panels who have been screened by the judges and who have at least some minimum amount of training in CINA issues should be sought out.**

*Representation should be more accessible in order to comply with the NCJFCJ Resource Guidelines which state that "each party must be competently and diligently represented in order for juvenile and family courts to function effectively." Each party should have access to representation at each stage of the proceedings, especially in any proceeding bearing on parents' rights to custody of their children.*<sup>2</sup>

**TPR cases:** In an involuntary termination of parental rights proceeding, the court shall appoint separate counsel to represent an individual who is the subject of the proceeding and an indigent parent is represented by the Public Defender. [FL 5-323(a)(1)(ir) & (b)(1), Rule 9-106(a)].

Jurisdictions again are interpreting differently when the right to counsel attaches in TPR proceedings. In some counties, the process of appointing an attorney for the parent will not begin until a parent is located, is served, files a notice of objection, and requests counsel (which can be 1-2 years after filing), and counsel for the child is appointed after that. In other counties, counsel for the child is appointed at the time the petition is filed in every case. In a very few jurisdictions, counsel for parents may be appointed at filing if DSS knows the parents will object to the TPR or if the parent is disabled.

Maryland Legal Services (MLSP), a program within the Community Services Administration of DHR, was created in 1971 for the purpose of ensuring legal representation in the circuit courts to, among others, children, in proceedings in which a department of social services is a party to the case. Therefore, DHR controls the process of providing counsel for all children involved in CINA and TPR cases in all counties in Maryland with the exception of Montgomery County.

## STANDARDS OF REPRESENTATION

Nothing in the Maryland statutes or rules addresses an attorney's specific duties or obligations as they relate to standards of representation for children in CINA cases. However, in addition to the right to counsel provision of CJ 3-821(a), the legislature enacted the following: In CINA cases Cts. & Jud. Proc. §3-834 adds a requirement for the appointment of an attorney to represent the interest of the child in addition to the requirements relating to the appointment of counsel for children, where it appears that the protection of the rights of the child require independent representation. It appears, therefore, that by enacting the requirement to appoint an attorney to represent the best interest of the child in certain circumstances, the legislature may have intended for the right to counsel provision to require attorneys to represent their clients according to the client's wishes. Additionally the Maryland Lawyers' Rules of Professional Conduct state "A lawyer shall abide by a client's decisions concerning the objectives of representation" (Rule 1.2(a)) and "When a client's ability to make adequately considered decisions...is impaired...because of minority...the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" (Rule 1.14(a)).

The value of independent counsel for children was first recognized in the landmark case In re Gault, 387 U.S. 1 (1967). Gault, however, did not suggest a detailed model of competent legal

representation for children. "Much of the conflict about the lawyer's role is due to the different goals meant to be achieved by having a representative. Representation of the child in protection proceedings has a dual purpose: to minimize the harm to the child, and to provide the child with an advocate. At times these purposes are congruent; at times, however, they diverge, resulting in confusion about the lawyer's role." (Representation of the Child...p. 291)<sup>3</sup> The Juvenile Justice Standards Project of the Institute of Judicial Administration and the American Bar Association have issued standards that recommend appointment of independent counsel for any child who is the subject of proceedings affecting his/her status or custody.

Advocating the child's wishes versus their best interest has long been the subject of debate in Maryland as well as around the country. It has long been the established practice of the Legal Aid Bureau (which prior to 1994 was responsible for representation of almost all CINA children), to represent the child client under guidelines that closely resemble the IJA-ABA Standards, Standards Relating to Private Parties.<sup>4</sup> The standard in part states "Where counsel is appointed to represent a juvenile in a child protective proceeding and the juvenile is capable of considered judgment on his or her own behalf, the determination of the client's interests in the proceeding should ultimately remain the client's responsibility after full consultation with counsel." In 1994 DHR implemented a competitive procurement process and as a result cases were transferred to seven contractors/firms who contracted with the Department for a three year period to provide legal services to children at a specific cost per case. The Request for Proposals for FY'98 through FY'2000 has just been issued and the approved vendors may again change. As more and more private vendors and individual attorneys are becoming involved in the representation of children, there are no standards or guidelines in existence for use in court proceedings in Maryland.

The responses to a questionnaire sent to over 100 attorneys involved in CINA proceedings confirmed that attorneys do not have one clear standard of representation. Court observations also revealed a high degree of diversity in the manner in which attorneys are representing their child clients. At one end of the spectrum, a particular attorney in one jurisdiction deferred to the Court to make a decision in the "best interest of the child" while taking no position in the case. Concerns were expressed by some members of the Judiciary as to the value of having an attorney for the child in such circumstances. In contrast, an attorney in a different county was criticized by the presiding master for advocating solely what the child wanted and it was suggested that she could therefore "phone in" her position because it was always going to be the same. Uniform standards would help to resolve such conflicts.

#### **Court Appointed Special Advocates:**

In addition to, but not instead of, an attorney, the court may appoint an individual provided by the Court Appointed Special Advocate Program (CASA). The purpose of the CASA program is to provide volunteers whose primary purpose is to insure that children who are subjects of CINA proceedings are provided with appropriate service and case planning and give the courts information to aid in making decisions in their best interest. The program is administered by the Administrative Office of the Courts, which may adopt rules governing the implementation and operation of the program [CJ 3-834.1]. CASA programs are currently operating in the following jurisdictions: Anne

Arundel, Harford, Howard, Montgomery, St. Mary's, Talbot, and Washington Counties and Baltimore City.

It is unclear whether the legislature envisioned that the child would be represented by an attorney under CJ 3-821, as well as a guardian ad litem attorney under CJ 3-834, and a CASA under CJ 3-834.1. Obviously, the resources required to provide this type of representation would be prohibitive and our assessment did not reveal any cases where this was occurring. We observed that no consistent type of representation is being provided.

### **Recommendation 3.3 - Establishment of Uniform Standards of Representation for Children**

**A task force of the child advocacy community in cooperation with the judiciary and the legislature should establish uniform standards of representation for children. Specifically, the standards should articulate whether the attorney should represent the wishes of the child or what the attorney considers to be in the child's best interest. The task force should be appointed in the Fall of 1997 and findings should be presented to the Rules Committee and appropriate legislation should be drafted for introduction prior to the 1999 legislative session.**

#### **APPOINTMENT PROCESS**

#### **DSS**

The department of social services in each county is represented by an attorney at all CINA and TPR proceedings. The attorneys range from a full-time employee of the department, handling multiple cases daily, to the County's or State's Attorney, to a law firm or independent practitioner under contract with DHR to provide representation to the Department with only a few cases per year.

#### **Agency Representation**

Every judge and master reported that the agency is represented by an attorney at each and every hearing, except for three judges who reported that the agency did not have 100% representation at shelter care. Approximately one-third of the judges reported that cases are regularly transferred between agency attorneys.

#### **Children**

In an action in which the local department of social services is responsible for payment for the services of a court-appointed attorney for the child unless the court finds that it would not be in the best interests of the child, the court shall appoint an attorney who has contracted with the Department of Human Resources to provide those services, in accordance with the terms of the contract and strike the appearance of a previously appointed attorney [CJ 3-834(2) & FL 5-323(a)(2)].

Prior to FY'95, the State entered into sole source contracts with the Legal Aid Bureau, Inc. (LAB) to represent the general child population and the Maryland Disability Law Center, Inc. to represent severely disabled children. Additional attorneys were available through the Court Appointed Attorney Program (CAAP), a panel of about 400 attorneys administered through DHR but

individually appointed by the court. During FY'95, cases were transferred to seven contractors/firms (including LAB) through a competitive procurement process. Note: Montgomery County does not participate in the procurement process. Children in Montgomery County are represented by OPD or by a CAAP. If no contractor is available the court appoints a CAAP on a case by case basis.

Although a court seemingly chooses an attorney the court in actuality sanctions the attorney contracted by DHR, absent a finding by clear and convincing evidence that it is in the best interest of the child that this appointment not be made. During the procurement process, vendors were required to submit technical proposals, including the qualifications of their staff, which were examined by the evaluation panel. DHR requires resumes to be submitted when new staff is hired by an approved vendor. At this time it appears the quality of legal representation for children in CINA and TPR cases rests in the hands of DHR, which is the parent agency of the petitioner in these cases. There is a State policy included in the RFP requiring that the contractor must agree not to file a civil suit against the agency without prior notice and consultation with the agency.

The American Bar Association Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases (approved by the Council of the Family Law Section in August 1995 and adopted in final form in February 1996)<sup>5</sup> seeks to enhance the judicial role in ensuring competent representation of children. These standards suggest that courts play a stronger role in the selection, training, oversight and prompt payment of court appointed lawyers for children. This includes: ensuring the independence of the attorney from other participation in the litigation; establishing uniform representation rules; enhancing lawyer relationships with other court connected personnel; ensuring timely appointments and entry of compensation orders at the time of appointment; determining lawyer eligibility for, and method of, appointment; involving the judiciary in attorney training; ensuring adequate compensation; and controlling attorney caseloads.

### **Parents**

The Public Defender maintains offices for CINA representation in Montgomery and Prince George's Counties, and Baltimore City. Parents seeking representation must meet eligibility requirements, and attorneys are appointed via staff attorneys or panel attorneys throughout the State. All requests for representation in termination of parental rights proceedings are arranged through the CINA OPD office in Baltimore City. Again the court has no role in the selection of the attorneys appearing in the cases.

Timely appointment of counsel for indigent parents can avoid serious delay. National Standards call for appointments to occur immediately after a termination of parental rights petition is filed with consideration of an attorney who represented the parent earlier. Attorneys can be instructed to contact their clients immediately. Parents can be summoned to court a few days after they receive notice of the case and counsel can be appointed and should be present to discuss the case. Parents also can be given the name of their attorney the first time they receive notice or the first time they contact the court. (See Guidelines....pp. 93)<sup>6</sup>

### **Promptness of Appointment:**

Counsel may not be appointed for parents until after the proceeding that results in losing their child

or at a hearing after disposition in which they seek to regain custody of their child. In jurisdictions that do not have Public Defender staff at the courthouse on a daily basis, parents must request appointment through the OPD office in Baltimore, wait to receive notice of that appointment, and wait to be contacted by the attorney. The adjudicatory hearing may be scheduled prior to an actual meeting between the attorney and the parent.

**Percentage of Parents Represented at Each Hearing:** The most noticeable finding was the lack of consistency between judges and jurisdictions regarding the frequency with which parents are represented. Answers ranged from 0% to 100% of parents being represented, with representation varied by hearing type. Parents were less likely to be represented at shelter care hearings and then again at review hearings than at adjudication and disposition hearings. Non-custodial parents were rarely represented at any type of hearing. Mixed responses were received to questions regarding continuity of representation as well. Very few judicial officers reported attorneys representing parents from shelter care through disposition and even fewer reported continuity through the review process. A small number of judicial officers also reported that one attorney represents both parents in all cases. That procedure has been shown to be a cause for postponements and continuances throughout this study.

**Representation of Children at Each Hearing:** Almost every judge and master reported that children are always represented by an attorney. However, when asked at what stages they are represented, a few judicial officers again reported that some children were unrepresented at shelter care and review hearings. Most judicial officers were unaware of any training or experience requirements for appointment to represent children although all appointment orders must be signed by the court. Although appointments to specific vendors were often continuous through the proceedings, the court reported there were a number of times when the specific attorney varied between hearings. The court also reported that attorneys for children frequently addressed medical, school and permanency planning issues on behalf of their clients.

Seventy-five percent of judges felt that social workers written documentation was well prepared as did half of the masters. No judicial officers rated the workers as unprepared. There was more variation in responses to questions concerning the worker's preparedness for oral testimony, with some judicial officers finding as many as 40% of the workers unprepared.

### **Recommendation 3.4 - Prompt Appointment of Counsel**

**The court should ensure the prompt appointment of, or referral to, counsel for all parties entitled to representation. The right to counsel and the procedure for appointment of counsel at State expense should be articulated clearly in the shelter care authorization form given to parents when the child is removed from the home.**

## CONTINUITY OF REPRESENTATION

A serious concern was expressed over the lack of continuity in representation for parties, especially parents. In some counties, attorneys are permitted to withdraw their appearance after disposition. The OPD is precluded by statute from appearing at certain review hearings and, as was seen during one site visit, the OPD as a matter of course is not involved in review proceedings. Appointments, once made, need to be continuous throughout at least the TPR process. Although the Maryland Rules call for service of the petition on the attorney for the parent, in almost all cases there is no attorney on whom the petition could be served. Parents and sometimes children face decisions regarding giving up all rights to the continuing relationship of their family without the benefit of anyone to help them understand and come to an informed decision. In some of the larger jurisdictions, attorneys for children and DSS have set up specialized units which deal only with particular segments of the case, thereby switching cases between as many as four attorneys for four different types of hearings in as little as a year. Although attrition may be responsible for many of the changes in counsel, agencies involved in these cases should make efforts to avoid the transfer of cases between attorneys during the various stages of the proceeding.

### **Recommendation 3.5 - Continuous Appointment of Counsel**

**Once counsel is appointed to represent a party in a CINA case, the court shall scrutinize carefully any request to strike an attorney's appearance in the case and shall make efforts to ensure continuous representation. In particular, special attention shall be paid to appointment of counsel for all parties whose location is known upon initiation of a new TPR case.**

## SELECTION OF ATTORNEYS

### **Recommendation 3.6 - Evaluation of Quality of Purchased Legal Contracts to Represent Children in CINA/TPR Cases.**

**An evaluation of the quality of purchased legal assistance should be conducted by an independent agency. The evaluation should make recommendations concerning the use of competitive bidding, a staff attorney model or sole source contracts. Consideration should be given to setting a floor for the amount that could be bid per case. The evaluation should include whether DHR is the appropriate agency to administer the contracts for representation of children. Consideration should be given to including minimum qualifications for the awarding of contracts to represent children and whether contracts should be awarded on a generic per case basis or whether specific types of cases require a differentiated approach to funding.**

### **Recommendation 3.7 - The Role of the Judiciary in the Selection Process**

**The authority of the Judiciary to appoint qualified attorneys should be enhanced. The judiciary needs to ensure the independence of the attorney for the child and the parents from the other participants in the litigation. The Judiciary's role in reviewing and commenting upon the selection of vendors in the representation of children, with specific emphasis on introduction and monitoring of attorney guidelines for training and experience, should also be clarified.**

*The issue of the most effective manner in which to provide legal representation to parties in these proceedings has been addressed in a number of studies commissioned by the State. Specifically, in 1990 the Maryland Legal Services Corporation evaluated the programmatic and fiscal requirements for publicly funded legal representation for children.<sup>7</sup> The preliminary report states substantial support for the services being provided by Legal Aid and Maryland Disability Law Center. Staff attorneys were generally perceived as understanding the applicable law and providing very good representation. Recommendations included the adoption and implementation of caseload limits for staff attorneys and increased training requirements for private attorneys and staff attorneys as well as a Statewide system of representation for all parties. The Governor's Commission on Legal Services Contracts issued a report in 1992 after being given the task of creating a consistent, standardized process by which State agencies could procure civil legal services for entitled public citizens.<sup>8</sup> The Commission recommended that legal services be procured through notice to potential providers, issuance of requests for proposals, evaluation of submitted proposals by a review committee, and awards of contracts by a procurement officer. The report, however, cited an experiment with the competitive bidding process in Ohio that was deemed a failure because (1) the successful bidders either under-bid to earn the contracts or underestimated their costs; (2) successful bidders wanted only simple and "clean" cases; (3) the bids did not accommodate the special needs of eligible clients with mental health or other problems; and (4) the system did not adjust for significant changes in law and procedure which took place during the contract period. These are the same issues the competitive procurement process in Maryland. Additionally this report along with the report recently issued by the Child Welfare League of America's Review of the Child Welfare System<sup>9</sup> urge DHR to ensure that legal services for children are not contracted to agencies that also represent parents in CINA proceedings (as is the current practice in Montgomery County). The CWLA report also recommends that additional efforts at continuity of representation for all parties be encouraged.*

The National Council of Juvenile and Family Court Judges' Resource Guidelines suggest that juvenile and family courts should take active steps to ensure that the parties to these cases have access to competent representation. The guidelines state that courts have the ability to positively influence the quality of counsel.

## ATTORNEY COMPENSATION

The issue of compensation was raised over and over again by virtually every participant in this study. Problems ranged from the inability of the court to proceed with cases because of the unwillingness of local attorneys to accept cases under the limits set by the OPD, to individual attorneys who could not afford to hire independent experts, to parents who did not have the money available for transportation to their attorney's office, to salaried employees of the various agencies who are ranked among the lowest, if not the lowest, paid attorneys in the State.

### **Maryland Law:**

Compensation for the services of an attorney appointed to represent a child in a CINA action may be assessed by the court against any party or against a parent of the child [CJ §3-821(e)].

Counsel appointed in a TPR proceeding may be compensated for reasonable fees, as approved by the court. The court may assign the costs among the parties as the court considers appropriate [FL §5-323(d)].

Twenty-four judges responded to a question concerning whether attorneys are being compensated adequately for the services rendered in TPR cases. Thirteen or 54% indicated the fees are fair, nine or 37% indicated they are too low and two, or 8% thought fees are too high. Attorneys throughout the State expressed concern over the inadequacy of the fees they received. Counties where panel attorneys from the OPD are used had the most complaints, not only about the level of the fees but the difficulty in attracting qualified attorneys to remain on the list without increased compensation. Of particular note were concerns expressed by attorneys and judges in Baltimore, Cecil, Montgomery, Prince George's, and Washington Counties.

Attorneys under contract with DHR receive a flat fee per case regardless of the time or complexity of the case. Fees vary among vendors; in Baltimore City, ranging between \$350 and \$440 per case per year. Attorneys who participate in the Court Appointed Attorney Program (when no attorney under contract is available) submit fee petitions to the court with copies to DHR. DHR requests voluntary compliance with a fee limit of \$75 per hour; though some attorneys request almost double that amount. In Fiscal Year 1995 the average cost per case in the CAAP was a little over \$1000. Data provided by DHR for FY'95 show attorneys appointed for children in 14,129 CINA proceedings and 437 TPR proceedings (Note: One proceeding may involve multiple children.)

The maximum allowable fee in the Public Defender Panel Program is \$1000 per case with an hourly rate of \$35 in court and \$30 out of court. These limits are set by COMAR 14.06.02.08. Bills are sent to the OPD from the attorney and are not scrutinized by the court. The OPD is in the process of standardizing its methods of handling cases, but at this time there are no specific criteria for what the attorneys should be doing in these cases.

**Recommendation 3.8 - Compensation of Attorneys in CINA cases**

**Current levels of compensation are too low and should be increased. Compensation practices currently utilized for attorneys representing parents and children should allow for adjustment of compensation to reflect the length and complexity of the proceedings. Of primary concern is the amount of time required by counsel to represent properly parties in contested TPR cases. Special attention should be paid to the need for expenditure of funds to conduct in-depth independent investigations and contract for the services of expert witnesses.**

**QUALITY OF REPRESENTATION**

**Training in TPR Cases**

Attorneys were asked questions about their training prior to representing parties in TPR cases, the length of time they had worked in their agency before trying their first case, opportunities to second chair their first case and by mentoring another attorney when they first practiced in this area. Seventy-eight attorneys responded to questions regarding their training and experience. Just under one-half of the attorneys said they had received training on TPR issues prior to handling their first case, with 67% of Baltimore City attorneys having done so. A high of 80% of attorneys in Prince George's County stated that they receive ongoing training while a low of 18% in Harford County answered yes to this question. Sixty-six percent of all attorneys responded that they were employed in their current position for at least nine months before they handled a TPR case. A small number of attorneys in Baltimore City, and Baltimore, Cecil and Prince George's Counties indicated they had 0-2 months experience before handling their first case. Only 27% of the attorneys had a mentor and only 9% had a second-chair opportunity.

**Quality of Representation in TPR Cases**

There was limited ability to observe TPR trials and make observations about quality of representation. The judges, however, were asked to comment on the skills, preparation and concern shown by DSS attorneys, parent's attorneys and children's attorneys for their clients. Results are shown by the percentage of judges throughout the eight sample sites that gave each response:

**DSS Attorneys**

Skills	46% Excellent	42% Good	8% Average	4%Poor
Preparation	79% Well	21% Somewhat	0% Unprepared	
Concern for Client	79% Concerned	21% Somewhat	0% Unconcerned	

### Parent's Attorneys

Skills	44% Excellent	33% Good	19% Average	7% Poor
Preparation	70% Well	30% Somewhat	0% Unprepared	
Concern for Client	74% Concerned	26% Somewhat	0% Unconcerned	

### Children's Attorneys

Skills	63% Excellent	33% Good	4% Average	0% Poor
Preparation	85% Well	15% Somewhat	0% Unprepared	
Concern for Client	89% Concerned	11% Somewhat	0% Unconcerned	

These responses indicate judges are pleased with the overall performance and preparedness of attorneys. Attorneys for children received favorable responses. There were some isolated problems with the skills of a small number of the parent attorneys.

### CINA Cases

Questionnaires were distributed to approximately 150 attorneys identified through DHR (attorneys representing DSS, vendors and CAAP) and OPD (staff and panel). Just over one hundred surveys were returned. Thirty-one percent (N=35) of the responses were from attorneys representing DSS, 42% (N=48) represent children and 27% (N=31) represent parents. Thirty-four percent (N=39) of the responses were from Baltimore City and 13% (N=15) were from Prince George's County. Other counties had from one to seven responses. At least one response was received from every county in the state except for Dorchester County.

**Training:** A significant number of respondents lacked training prior to beginning to represent parties in child welfare cases. More than half of the attorneys had no clinical experience, mentorship, or second chair opportunities. Forty percent of respondents reported that they appeared in court within one day of beginning their current job. Almost half of the attorneys had no prior experience in the child welfare area at all. There do appear to be some ongoing training opportunities, however. Fifty-five attorneys reported that they had attended training at least once per year, with a few attending as many as 4-8 trainings per year. An overwhelming number of attorneys reported that they would benefit from additional training. Thirty-four distinct topics were mentioned. Specific areas for training often cited were: updates on new legislation (federal and state) and case law, special education issues, welfare reform, and interdisciplinary training offered to groups of attorneys who are normally on opposing sides.

**Quality of Representation:** Judges and masters also expressed concern over a **lack of advance preparation by counsel**. The docket often was delayed due to attorneys meeting with their clients for the first time at the start of the hearing and the subsequent need for negotiation between the parties once everyone had a position in the case. Montgomery and Washington Counties were

exceptions to this problem. The Montgomery County judges begin their docket promptly at 8:30 am and the DSS Attorney in Washington County holds a pre-trial conference on all cases prior to the hearing date and all cases are set for specific periods of time throughout the day based on his estimate of the time needed. Other concerns included: DSS failure to submit reports to the court and other counsel in advance, and lack of clarity as to the proper role of child's counsel.

Interviews with the Judiciary revealed a number of judicial officers were concerned with the quality of representation being provided by attorneys who were under contract with the OPD. Many judges felt that these attorneys are the least experienced and are inadequately trained for the demands of the juvenile court process. Responses to the attorney questionnaire revealed the attorneys representing parents were least likely to have second chair and mentoring experience and less likely to receive ongoing training in CINA issues than any other group overall.

**Caseloads:** Attorneys were asked questions concerning the number of cases they got each year and the number of cases they handled on a typical day. It became clear that, in the large urban jurisdictions, caseloads are quite high (the 6th, 7th and 8th Circuits reported the highest caseloads). Attorneys for DSS were found to carry the highest caseloads, with as many as 500 cases per year. Caseloads of over 300 per year were reported by agency attorneys in Baltimore, Montgomery, and Prince George's Counties, as well as Baltimore City. The average agency attorney caseload per day was eight cases with 22% having 20 or more cases per day. High daily caseloads were most often noted by agency attorneys from Cecil, Prince George's and Washington Counties and Baltimore City. Attorneys for children also reported caseloads of as many as 400 cases per year. The issue of appropriate caseloads is difficult to examine while the statistics on open and closed cases provided by Judicial Information Systems, as explained elsewhere in this report, are deficient. The American Bar Association has proposed a methodology for calculating appropriate caseloads and the NCJFCJ Resource Guidelines have proposed sample minimum time requirements for various stages of a CINA and TPR proceeding and attorney responsibilities in preparing for those hearings. These calculations would be impossible to complete with the scant information on the current system. It often has been stated that in these types of cases, attorneys should never spend more than a third of their time in court if they are providing appropriate services to their clients, such as conducting home visits, attending special education hearings, and generally monitoring their caseloads.

The issue of attorney caseloads is further affected by the passage of the new permanency planning legislation, which now mandates court review every six months after the 10-month review. In a number of jurisdictions, hearings were being conducted only once every eighteen months. In those jurisdictions, nearly triple the number of court hearings will be held without any proportional increase in attorney staff, court personnel or judicial officers. In an effort to address this issue the Circuit Court for Baltimore City received funding for two additional contractual masters for a one year period to give some assistance with the increased number of hearings. The intent of the legislation is to reduce the backlog of TPR cases and, thus, to promote permanence. This will mean a greater number of TPR hearings.

The American Bar Association Standards stress the court's role in ensuring reasonable lawyer

caseloads. Standard L-1 states "trial court judges should control the size of court-appointed caseloads of individual lawyers representing children, the caseloads of government agency-funded lawyers for children, or court contracts/agreements with lawyers for such representation."<sup>10</sup> Standard L-2 lists steps that judges or court administrators should take if they are aware these caseload limits are close to being exceeded.

The issue of agency attorney representation was addressed by an ABA project entitled Evaluating and Improving Child Welfare Agency Legal Representation.<sup>11</sup> This report states "Excessive litigation caseloads may lead to inadequate preparation for hearings or trials, as well as burnout and turnover of legal staff. A caseload of 40 to 50 active child welfare cases appears to be a reasonable size, fewer than 40 is preferable, and an average of over 60 active cases seems to be unmanageable."

Courts can set prerequisites for appointments, including some requirements for experience and training. They also urge juvenile and family court judges to advocate in State legislatures and local governing bodies to provide sufficient funding for attorney compensation. The court can also play an important role in educating attorneys including volunteering to provide training and publications for continuing legal education seminars. The Guidelines go on to list those areas in which attorneys should be trained prior to becoming involved in and after being assigned or retained in child abuse and neglect cases. (See Guidelines...p. 23)<sup>12</sup>

### **Recommendation 3.9 - The Role of the Judiciary in Ensuring Quality Representation**

**The Judiciary should exercise its authority to foster the appointment of adequately trained attorneys in CINA and TPR cases. Funding for training and payment of fees must be obtained through joint efforts of the advocacy community and the Judiciary to persuade the Governor and the General Assembly. Mandatory participation in training for attorneys representing all parties and mentorship requirements for new attorneys with initial oversight of their practice and access to the expertise necessary to handle complicated cases should be required. Compliance with the minimum standards outlined in the Resource Guidelines should be encouraged.**

### **Recommendation 3.10 - Mandatory Caseload Levels**

**Once minimum standards for competent representation are established and accurate statistical data are available, maximum caseload levels can be determined and limits can be set on the amount of cases that can be handled by each individual attorney, for all parties. Special attention must be paid to the increased frequency with which an attorney must appear in court for six month review hearings and the increased number of TPR filings.**

## CHAPTER FOUR

### Hearing Content

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## SUMMARY OF SITE VISITS

The one thing that was clear from the site visits was that no two jurisdictions in Maryland handle CINA and TPR cases the same way. The federal and state laws are placing increasing demands on the juvenile court with each court interpreting the requirements imposed by these laws differently.

The quality of hearings and the thoroughness of the process are correlated to the priority given in each individual jurisdiction to the issues concerning child abuse and neglect cases and the importance each court feels that these cases merit. In many counties the DSS attorney "runs the show." The attorney schedules the hearings, notifies and essentially appoints other counsel, and controls the flow of the docket. In many of these jurisdictions the normal CINA case proceeds by the presentation of a court report, a brief proffer from the attorneys and the approval of the report from the judge. In these counties it is often rare to hear a judge question where missing parents are, what efforts have been made to reunite families, or whether there is progress with the permanency plan. It is equally rare to set a definitive time when the plan must be achieved or changed. Some jurisdictions require the parties to appear in court or at DSS for a pre-trial conference to sort out the contested issues. Others argue any and all points on the day of the hearing and end up seeking a continuance at the end of a long day with no progress. In certain jurisdictions where the court takes a proactive role, there are regular meetings between the court and the parties; applications for grants to help improve the process are requested; and judges actively question the parties about progress in cases and order specific services. There are courts in which the parties spend all day out in the hall and then walk in the courtroom and are told the case has been concluded without their presence. Children may wait all day for their case to be concluded only to be told they have to come back another day.

During site visits, observations were made concerning the hearing procedures, the role of the judicial officer, the conduct of the attorneys and their relationships with their clients, the physical surroundings and the number of hearings being conducted during the court session. The Clerk's Office was visited and files reviewed. Interviews with judges and attorneys were conducted or specific questions were asked if there was not sufficient time for formal interviews. In Worcester County there were no hearings on the day of the site visit and in Caroline County there was only one hearing observed. Therefore data is limited in those sites. A comparison of observations at the different sites is included in the following chart:

Observations in Sample CINA Sites									
Site	Calvert	Caroline	Harford	Howard	Montgomery	Prince George's	Washington	Wicomico	Baltimore City
Court holds pre-adj. conference		x			x				
Court schedules hearing to appoint counsel						x			x
Parties meet prior to hearing date							x		
DSS represented by agency or county attorney				x	x	x			x
Child represented at all stages	x	x	x	x	x	x	x	x	x
Majority of children excused from court proceedings		N/A		x			x	N/A	
Majority of parents not present	x	N/A	x				x	N/A	
Majority of custodial parents present are represented	x	N/A			x	x		N/A	x
DSS Attorney controls docket	x	x		x	x		x	N/A	
SW sits with attorney	x	x	x	x	x	x	x	N/A	
Child sits with attorney	x	N/A	x			x	x	N/A	
Parent sits with attorney	x	N/A				x	x	N/A	
Cases called into courtroom one at a time		N/A		x	x	x	x	N/A	x
CASA participated in hearing			x	x	x				
Case conducted primarily by considering court report	x	N/A	x		x	x	x	N/A	

\*\*N/A - Insufficient sample of cases to make findings in these areas.

The following is a brief summary of the positive aspects, as well as areas of possible improvement in each sample site.

**Calvert County:** *Hearing Procedures* - The hearings began promptly. The DSS attorney took the lead. The majority of cases proceeded by submission of the court report with brief comment by the other attorneys. At the time of the site visit, the requirements of the statute relating to reasonable efforts, stating the reason for removal from the home and notifying the parents of their obligation

to keep the court informed of their whereabouts, were not addressed by the court or put in any formal language in the court order. Most parents were represented by a staff attorney from OPD and most children by Legal Aid. There were a number of cases with 4-5 attorneys at the trial table. There was a stenographer, security officer and bailiff in the courtroom. The juvenile clerk performs courtroom clerk duties and is present in the courtroom during the hearings.

*Clerk's Office/Condition of Files* - The petitions contained a good deal of information about the children and the allegations. Orders are submitted by the DSS after the hearing and are frequently filed late. Statistically, a number of files were closed with the wrong disposition designation. Almost all shelter care cases were heard on the same day the child was placed in shelter care. Reasonable efforts language was not found in many of the cases. There were cases in which the petition was not pursued, but a notice of dismissal was not filed by DSS for 8-9 months and the file just remained open and unattended. Docket entries are made manually and little information is recorded in the dockets.

*Facilities* - This courthouse has been remodeled inside. There are private lawyer conference rooms right outside the courtroom. The court schedules CINA cases two days a month and only hears emergency matters in between CINA cases. There was, however, significant traffic in and out of the courtroom as attorneys who were working on more than one case went in and out to confer with attorneys on other cases. The parties in all the cases were free to come in and out of the courtroom as well. The judiciary in Calvert County has chosen not to use masters to hear CINA cases.

**Caroline County:** *Hearing Procedures* - The court recently has begun holding "arraignment hearings" in CINA cases. This is a dry run for the lawyers and the parents to appear and work out issues. When witnesses are summoned everyone is supposed to be ready to proceed. Juvenile cases are scheduled every other Friday, but some may be specially set and shelter care can be any day. In the hearing that was observed, neither parent was questioned about their desire for a lawyer although the mother had been told to go to the OPD at the prior hearing by DSS. The parents also were not informed by the court or the Department of their responsibility to keep the court informed of their whereabouts. The hearing was conducted mostly by proffer and the admittance of reports. The worker sits with the agency attorney and is questioned by the parties and the court. Orders are not prepared at the hearing, but at a later date by an attorney (usually the agency). No one is served for future hearings at the close of the case. Personnel in the courtroom include: the judge, the reporter (who uses stenography), the juvenile clerk (who is responsible for swearing in the witnesses and taking notes of the proceedings which are kept as a permanent record but done mostly in shorthand) and security personnel.

*Clerk's Office/Condition of Files* - There is one clerk who is in charge of all juvenile cases. She attends all hearings and docket the information in a juvenile log book. It was easy to determine the exact number of CINA cases by reviewing the log book for the last three years. There are very few CINA cases. The JIS printout listed only 4 CINA cases (2 families) terminated in FY'95. By going through the docket book 12 cases were found

(seven families) terminated (or should have been terminated) during that time. Discussions with the

juvenile clerk revealed that she does not close cases at one specific time in the case, but that it is done arbitrarily. For instance, one case was closed after it was dismissed prior to adjudication, but another case in which the shelter care was filed back in September 1994 and never adjudicated, had never been closed. Once a shelter care petition is filed, no one checks to see if a CINA petition is ever filed. Separate petitions are filed for shelter care and CINA, but the same number is used. There is little information contained in the shelter care petition. While the CINA petition goes into details about the facts, little identifying information such as race and sex are included. Some cases had no mention of the identity or whereabouts of the parents. It was almost impossible to tell who was served or present at any hearings. Two separate cases involved children placed in shelter care for seven days prior to a hearing and one involved a child placed voluntarily for five months prior to a petition being filed.

*Facilities* - Since this is a one judge courthouse there are a number of other offices within the courthouse. There is a waiting area outside the courtroom where it appeared most of the negotiations took place and where the parties wait. There are, however, many people going in and out of that area to get to the State's Attorneys' Office and other places. On this particular occasion this was the only case on the docket. The judge had seated a grand jury prior to the beginning of the case, which was docketed for 10:00 but started at almost 11:00.

The judge appeared to take a strong interest in these cases, but did not want to put himself in a position of micro-managing DSS. The judge chooses not to use masters to hear CINA cases.

**Harford County: *Hearing Procedures*** - CINA cases are heard almost exclusively by a master. Exceptions are quite rare. Two afternoons a week and one full day per month are reserved for CINA hearings. All different types of CINA matters can be heard on these two afternoons, and once a month the day is set aside for uncontested reviews. DSS files a report prior to each hearing; however, the report usually is not received until the day of the hearings and much of the negotiation occurs in the hallway prior to the hearing. Most of the hearings observed proceeded by proffer, with limited testimony on areas where there was not agreement. No attorneys for parents appeared although one parent was represented but waived the attorney's appearance. At the time of the site visit, neither the Court or the parties addressed where the missing parents were or the obligation of the parents to keep the court advised of their whereabouts. The next hearing date is set at the close of the hearing, but no one is served at that time. The master was actively involved in the cases, asking questions and commenting on plans. He spoke directly to the parties and often tried to make them understand his decision. Most of the children were present in court and they were all represented by counsel.

Although there is little direct involvement of the judges in CINA cases, the Administrative Judge of the Court holds meetings on a monthly basis with DSS and the attorneys involved in termination of parental rights cases. Approximately every other month he schedules a Guardianship Pre-trial Conference and Post Guardianship Review day. DSS files a written report every month on the status of each TPR case and these cases are given priority on the docket.

*Clerk's Office/Condition of Files* - The most striking thing about these files was how disorganized they were. The documents were not fastened into the files. They were haphazardly placed in the file in no apparent chronological order. Some documents were rubber banded together and documents such as FCRB reports and DSS reports were included. There are no docket entries in the file. The clerk makes all the entries in a large docket book. The juvenile clerk serves as the courtroom clerk, assignment clerk, court reporter, juvenile clerk and bailiff. She can tell you about many of the cases off the top of her head because she is virtually the only one who sees them. One of the reasons the files are in such a disarray and the docket entries are not up to date is because she receives little or no assistance. The master is calling the next case while she is still talking notes or filling out form orders on the last one, etc. The proceedings are all audiotaped by the clerk.

The cases are filed by family rather than by child. Therefore it is difficult to make caseload comparisons with other jurisdictions around the state. There were a number of cases in which an adjudicatory hearing was held and disposition was set for a later date, but then the next hearing was called a review. The term "commitment" was used inappropriately in this county as well, with kids being committed who were not intended to be in the legal custody of DSS. Court reports were done for every hearing and they were in the file. They were helpful in determining the status of many cases which would otherwise been impossible based on the docket entries and court orders. Some of the files in our sample turned out to be delinquency cases not CINA cases. The race and sex of the child were contained in the petition in about half of the cases.

Shelter care hearings were held on the next day after removal in about half the cases with some cases being as many as six days later. In cases with siblings sheltered at different times, the cases were still filed under one petition number. Adjudication and disposition was frequently consolidated. Reviews were scheduled as frequently as three to six months after disposition and were scheduled in cases in which the children were at home. This may have been due in part to kids being committed but placed at home. In some instances, the judge's order was filed well after the case had been heard by the master. Reasonable efforts findings were usually made by form entry at shelter care hearings. After shelter care the findings were less consistent and were never made at times the case was postponed or continued.

*Facilities* - The master uses the County Council hearing room in the basement of the courthouse to conduct the hearings. There is a tiny office across the hall where the master can use a desk and telephone between hearings. All cases are scheduled at the same time. There is no place for the parties to wait or to negotiate cases, except the hallway. There is a security officer in the courtroom as well as the juvenile clerk. No other court personnel ever appeared. Everyone involved in the cases that day is usually coming in and out of the large hearing room while the cases are going on. The worker and the child sit at trial table with their lawyers, and the parents and their attorneys sit at the trial table as well.

**Howard County: Hearing Procedures** - Historically, juvenile cases are heard on Tuesday and Thursday afternoons. However, the delinquency docket was increasing so dramatically that the DSS asked for and was granted one Monday afternoon a week for their cases. The cases are scheduled on every Monday and are alternated between two masters, whose duties include juvenile court and

domestic relations. Shelter care cases are heard on juvenile days, which means Tuesday and Thursday afternoon and now Monday as well. The court interprets the shelter care statute, CJ 3-815(d)(2), as the next juvenile court day. There are very few exceptions and the judges do not hear any CINA cases de novo. Temporary emergency orders are issued from the bench but the majority of orders are prepared by DSS and all orders are done by the parties. Although the docket is scheduled to begin at 2:00 p.m., there has been a problem beginning some cases promptly due in part to children being represented by attorneys based in Baltimore City. At the time of the site visit, the masters reported that these attorneys often were not prepared for cases in advance and, at times, did not talk with clients before arriving at 2:00 p.m. As a result, appropriate Standards of Representation for children became an issue between the masters and the attorneys.

The only staff in the room was a sheriff who went in and out and a court reporter who uses a tape recorder. There was never a clerk anywhere during the observed proceedings. Future hearing dates are scheduled by the master if they are a follow-up of the current hearing i.e., postponements, but review hearings are not scheduled in court. No one is served in court. During several of the hearings, it was noted that parents were not notified of their obligation to keep the court informed of their whereabouts. Also, several of the files reviewed lacked a memorandum from the master. In those cases, therefore, it is unclear what information the judge has before him when he must examine and sign the order.

Cases were called in one at a time, but CASA workers and other attorneys came in and out. Each case observed that day happened to have a CASA worker and therefore a CASA report was prepared in each case. DSS does not prepare a court report. No reasonable efforts findings were made by the master, but DSS incorporates the findings into all of the orders regardless of that fact. The cases all proceeded by offers of proof from the attorneys. The parties sat at the trial table with their attorneys. In one case with a *pro se* parent, he sat in the back and spoke from there. CASA workers and other interested parties also spoke from their seats. In one case the children were left under an indefinite commitment to the department, although they were placed at home with their mother. Some children were excused from court and others waited outside during the proceedings. Six of the seven cases took between five and fifteen minutes to conclude. The last case took an hour. This case was a contested adjudication that had already been postponed five times because the parties could not reach an agreement. The attorneys held a chambers conference with the master and then reset the hearing again for a "full trial."

*Clerk's Office/Condition of the Files* - All papers relating to the case are in the file including FCRB reports, health reports, etc. There is no indication anywhere in the file about what occurred at each hearing. The jacket of the file lists some of the hearing dates and types. A number of files did not contain the court orders and this has apparently been a long standing problem. DSS is not given a date certain by which to prepare the order. No indication is made of future hearing dates. Service is made through use of the sheriff after DSS notifies the court of the need for a hearing. The masters differ in their practices about retaining files in their chambers versus returning them to the clerk's office. The files were not well organized. The Howard County clerks office has reorganized recently and the supervisor of juvenile has no previous juvenile experience. When a shelter care is

held the court then sets a return hearing date which may or may not turn into an adjudication hearing. If the DSS does not end up filing a petition then that date just passes; if they file a petition then the date is sometimes, but not always, the adjudication. The court uses the “continued with/without a finding” designation when there is no disposition but the clerk decides to close the case. The cases are often set in for pre-disposition hearings that appear to be no different than disposition hearings. The file review revealed an average of over 12 months until the first review hearing, with 9 of 19 cases taking 13 months or longer. One case involved an exception to disposition that was eventually mooted by the emancipation of the child but which had not been reviewed in over two years.

The clerk is responsible for notifying the OPD about the need for parent representation. The OPDs under contract do not tend to be local and this sometimes delays or prohibits parents from being represented.

*Facilities* - The courthouse and courtroom have been renovated and the master sits atop an elevated bench and wears a black robe. He is far away from the litigants. The parties wait outside in the main hallway with all other litigants, but there is a little meeting room right outside the master's courtroom where conferences take place.

**Montgomery County: *Hearing Procedures*** - This Court is considerably different than any other juvenile court in Maryland. The Court is physically located in the District Court. TPR cases are then filed separately in the Circuit Court (although, effective 10/1/97, legislation was passed to move TPR's to the juvenile court, thereby the District Court). Montgomery County will be the only county conducting cases in the District Court, but consistent with legislation passed in 1996, all TPRs statewide will now be heard in the juvenile court. There are three District Court judges specifically designated to hear juvenile cases. Therefore, CINA cases can be scheduled on any day and before any of the three judges (recently, the number of judges assigned full time to the juvenile court has been reduced to two, with two other judges serving part time).

The docket begins promptly at 8:30 a.m. and proceeds quickly. The MCDSS attorney is prepared to proceed on at least one case and usually all cases by the time the docket is called. The docket is usually reviewed and then each case is called in one at a time. The parties rely heavily on a status report issued by the social worker. This is a lengthy document listing the children and the parents and their whereabouts, the status of the case, the services provided, the progress made and the recommendations. Although the Public Defender is concerned that too much hearsay gets in through these reports, it appeared all parties stipulated to their being admitted and then parties raised their concerns or submitted verbal amendments. These reports give the judges an opportunity to refamiliarize themselves with the basic facts in the case. The MCDSS attorney calls the social worker as a witness. The worker testifies as to the basic status of the case and is subject to cross examination. Numerous CASA workers and foster parents were in the courtroom and usually spoke from their seat in the courtroom. If the case was not in dispute the judge would render a decision at the close of the MCDSS case. If any party had other witnesses they would take the witness stand or testify from their seats and then be subject to cross-examination. The bailiffs would call each case in and keep order in the courtroom. The file reviews and hearing observations revealed that virtually

all known parents were represented, usually by the OPD, and many children were represented by the OPD as well. The court recently has instituted a pre-trial hearing system which involves setting a date halfway between shelter care/emergency hearing and adjudication to try to discuss and narrow the issues.

The Montgomery County Juvenile Court is automated, although a new system is currently being implemented. The parties were able to receive court orders, be served for the next hearing and be informed of their obligations prior to leaving the courthouse.

Reasonable efforts findings were lacking in most cases. When they were included they appeared to be boiler plate language. Most cases used the term "commitment to MCDSS" even though there was no intention to transfer legal custody, therefore it was difficult to determine when and if reasonable efforts were required. Cases which were past disposition were not reviewed in light of the recent changes in the permanency planning statute. During the hearing observations the permanency plan was only occasionally mentioned and when it was the judge did not go into the required new findings concerning the priorities in case planning. In one case when the judge did ask the permanency plan, she was told "reunification but we don't know when." All future hearings were being set in six months or less, although the file reviews indicated most cases were already being reviewed frequently.

*Clerk's Office/Condition of Files* - There is a separate juvenile court clerk's office in Montgomery County. The clerks only work on juvenile cases. There was concern mentioned by clerk's office staff about a lack of training, as was evidenced by inconsistencies in the way clerks docketed cases and the categories they used in closing cases, typing orders, etc. It should be noted that one of the clerk's responsibilities is to prepare the court orders. The orders are now computer generated with check off boxes and fill in the blanks. After the clerk prepares the order the judge signs it in the courtroom and the parties wait at a window outside the clerk's office for their copy. At that time the parents also are served for the next hearing and they sign a purple form advising them of their responsibilities under CJ 3-827. The clerks communicate with parties and attorneys through a large window in their office. Someone is always available to answer questions.

There was a great deal of detail and specificity in the court orders in these cases. The judges in Montgomery County are ordering children to be placed in specific placements and detailing many specific services to be provided by the Department. The Court also places stringent demands on the parents and the children. The file reviews and hearing observations detailed a plethora of programs and services within the county for the evaluation and treatment of problems. This is in stark contrast to information gathered in other counties. Frequent referrals for parent-aide services, drug and alcohol assessments and family therapy were noted.

Very few cases were resolved within 60 days of the filing. Court files did not contain information regarding the reason why cases were being postponed. The court uses the word "continuance" in virtually every case regardless of whether the case was postponed, continued to another day for more testimony, or set for further review. Cases which the parties knew were complicated were often set

for half days or whole days on the docket, but cases needing additional time were rarely heard on consecutive court days.

Of the 71 cases randomly selected for our sample, five cases did not exist, at least five were counted twice because they had multiple petition numbers, and many cases were coded with the wrong disposition. These mistakes included cases coded with a disposition of “probation” which is not used for CINA cases and “stets” which also should not be used for a CINA case. Additionally cases coded as dismissals were commitments and vice versa.

Efforts to obtain accurate numbers were further hampered by the practice in Montgomery County of filing a petition for shelter care under one petition number and then refileing the CINA petition under a different number. Therefore every case that begins as a shelter care is counted twice and the shelter petition is treated as a dismissal at some point down the line. This skews the data to show a disproportionate number of dismissals in Montgomery County as well as an inflated number of original filings.

Montgomery County also uses a term "County Attorney to Consider" for cases where the court or the parties want to wait to act until they get the results of a report or see if the situation is resolved. These cases were often pre-adjudication or pre-disposition and the parties did not have to appear at the next hearing. These cases sometimes were left open for six months or longer without a finding of any kind. Montgomery County also finds the child CINA at the end of the adjudication rather than at the disposition. There is a difference in terminology across the state regarding when a finding of CINA should be made. A number of cases were heard for adjudication and "temporary disposition" that were later reviewed without ever actually having a disposition.

The petitions filed by the Department were lacking in background information about the family. Race and sex are not mentioned. Information often was not available about the father; even when there was no information, this fact was not stated. Cross references to siblings who were included in this case or who had been before the court previously were not available. This information is needed for statistical purposes, if for no other reason. There are no docket entries in the file. There is a sheet with the case name, judge, attorneys present and the type of hearing scheduled. If the case goes to trial, the sheet tracks the witnesses who testified for the purposes of transcribing the audiotape. It is impossible to determine whether the parents or child appeared at the hearing or who else may have been present, how (in most cases) the case proceeded, or what findings of facts were made by the judge.

The file review process also noted a much higher frequency for the need to obtain foreign language interpreters than elsewhere around the State. Difficulties in obtaining an interpreter who spoke the specific language of the parties, caused a delay in several cases. The juvenile court in Montgomery County also experienced a much higher frequency of cases involving sexual abuse than anywhere else in the State.

*Facilities* - The District Court occupies a building vacated by the Circuit Court when new facilities

were built. Rather than redesign the entire building, a series of internal walls were built, creating a maze of hallways. It appeared many people who were not court employees had the access code numbers to enter the interior portion of the courthouse. In the last few months, access to the building was limited, as security scanners have just been installed through which the public must enter to obtain entrance into the building. The juvenile court area of the courthouse is somewhat separated from the rest of the district court. There is a separate waiting area, complete with a play area for children. There appears to be ample opportunity for the judges to interact and consult. In fact, it was noted that there appeared to be a good amount of information sharing and cohesiveness among the judges. They appeared to function as a team and were somewhat isolated from the rest of the courthouse. The Clerk's Office is also separate from the rest of the District Court. The juvenile judges showed a commitment to make changes to improve the workings of their court.

**Prince George's County: *Hearing Procedures*** - CINA cases are heard almost exclusively by one master and very few exceptions are filed. CINA cases are heard on Mondays and Tuesdays and once a month Foster Care Review Board hearings are held. Shelter care cases are heard on any day. The proceedings are audiotaped. There is a bailiff, security officer and clerk present at most times. The daily docket is heavy. On the day hearings were observed there were 16 cases/24 children on the docket. All the cases were reviews. They were all scheduled to begin at 9:30 a.m. and the entire docket was completed at 1:15 a.m. by not taking a lunch break. The presiding master has been active in juvenile court issues for many years.

The DSS submits a report to the court which the master reads at the start of the proceeding. The parties proffer any amendments and their position to the court. The master then prepares a memo which is basically a check off form where she can insert particular additions. The form is then given to the bailiff who makes copies and gives them to the parties who are waiting in the courtroom or in the hall. The date of the next hearing is included in the memo as well as information on who was present in court. The memo is then sent to the judge and copies of the signed order are mailed to the parties. Parents are given the form about keeping the court informed of their whereabouts only at arraignment. The DSS has a staff person assigned as an absent parent locator and this information is usually contained in the file jacket. Cases which had no differences in opinion lasted about five minutes each. Cases with a permanent plan of adoption were scheduled for a TPR/Review hearing before a specific judge in six months. Contested cases proceeded by proffer and the master rendered a decision at the close of every case. Contested cases were 30 minutes to an hour long. Reasonable effort was mentioned on the record most of the time, and a finding is included in the master's memo.

In this county, Legal Aid still represents most children and the OPD has attorneys assigned specifically to represent parents (although they do travel to Southern Maryland and Anne Arundel County as well). Therefore, everyone is familiar with each other and cooperation is apparent. There were two cases in which the siblings in each case were represented by different attorneys due to a conflict of interest in their positions. The child's appearance was waived in some cases.

*Clerk's Office/Condition of Files* - There is a separate juvenile court clerk's office. All the social service information (i.e., FCRB reports, evaluations, medical records) is contained in a separate file,

the computerized docket entries were clear, and the use of preliminary hearings and the master's memos gave insight as to what occurred. Difficulties with terminology were noted again, cases being closed under the wrong statistical category and lack of demographic information concerning children were noted. CINA cases are coded with a different prefix than delinquency cases.

*Facilities* - Most of the key players in this process have an office at the courthouse and they are able to work on cases while they wait and investigate information from their facilities. There is a paging system located throughout the facility. There is a large waiting area for the whole juvenile area and a small conference room right outside the master's courtroom. The courthouse is newly expanded and juvenile hearings take place in a large, clean, modern facility. The master sits on an elevated platform and wears a black robe. She has access to many facets of these cases through the ability to interact with paternity, child support and the criminal docket from a computer on her desk.

Prince George's County has a number of procedures in place for hearing cases, such as setting uncontested TPRs before one specific judge and holding FCRB days. There is however, very limited involvement of the judges in CINA cases. No additional resources are in place to deal with the increase in review hearings required by the permanency planning legislation.

**Washington County:** *Hearing Procedures* - CINA cases (including TPR) are scheduled one day per week and usually are rotated between two different judges. The most unique difference in this county is that each case is scheduled for an individual time on the docket by the DSS attorney. There were 17 cases (25 children) on the docket. The Judiciary gives the DSS attorney significant autonomy in caseflow management in exchange for the attorney resolving many issues without the need to involve the judges. The DSS attorney sends notice to the clerk, court reporter and other attorneys. This notice was sent six days prior to the hearing. Few parents were represented at hearings observe. The other parties claim it is difficult to find attorneys who live or work in the general area who are willing to do OPD panel cases. Parents are not provided OPD counsel at review hearings as a matter of course. A vendor under contract with DHR represents children in all cases except for a few that Legal Aid has kept. Very few children were present in court as were very few parents. Another procedure unique to this county is that the DSS attorney holds a pre-trial conference at DSS about two weeks before the date of all court hearings. This is supposedly where all the negotiations take place and the amount of court time needed is determined. The docket consisted of just about every conceivable CINA case type.

The judge took an activist role in virtually every case. He questioned the workers and parents beyond what was asked by counsel and contained in the reports. He questioned the permanency plans and in one case told the Department they were premature in a plan of adoption in just about the only case where the parents were present. He made reasonable efforts findings on the record in some cases. All the cases except for one proceeded by proffer, although the parties spoke directly to the court in almost every case as well. The worker sat with counsel and most of the few children who were there sat with counsel as well. The judge announced all his decisions in open court and the orders were prepared by the clerk in the courtroom. No one was served for future hearings and the court merely set a certain time frame for the next hearing.

*Clerk's Office/ Condition of Files* - Each case had a computer printout of docket entries. A discrepancy was found in the dates of filings as compared to the dates of hearings or docket entries. It was explained that when papers are filed in the courtroom they may sit for a few days until the clerk gets to stamp them in back at the clerk's office.

A common practice appears to be to place a child in shelter care and hold the hearing later than the next court day. The 'next day' is avoided by DSS through the filing of a motion to postpone the hearing and having the judge grant that motion on the day they actually hear the shelter care. The DSS attorney stated that this was often necessary to ensure that everyone is in attendance, but this clearly violated the intent of the statute. As in many of the other counties visited, children were found CINA at adjudication and disposition type decisions were being made at that time. This was similar to the adjudication with temporary disposition used in Montgomery County. As in most other jurisdictions, a number of cases were closed with the wrong disposition code. The file reviews indicated most cases were heard by more than one judge between shelter and disposition.

A number of cases were coded as "care and custody DSS" but the children were not removed or went home under an Order of Protective Supervision(OPS). Again terminology is a problem. Often the file indicated a commitment to DSS when the child was not in either shelter care or foster care. Little identifying information such as race and sex is contained in the petition. Separate petitions are filed for the shelter care proceeding and the CINA proceeding, but the same number is used. A large number of the cases listed as "other disposition" were single appearance cases that resulted in an OPS.

*Facilities* - The judges are not assigned to a particular courtroom. They rotate depending on the type of hearing. For CINA cases, they use a small courtroom without a jury box. The parties wait on benches out in the hall and a bailiff calls the cases in one at a time. Because the cases were set at specific times, there were times when the docket was ahead of schedule and the parties were not yet present and times when they fell behind and got backed up. Overall, however, there were not a lot of people waiting at any given time. Three of the scheduled cases were taken off the docket for unknown reasons. The juvenile clerk was present at every hearing and took care of swearing in witnesses and filling out check-off orders. The court reporter used an audiotape, but she also does a transcript of every case which is then put in the file. This was the only court visited where it was possible to tell who was present and whether testimony was taken. In some cases a security officer was in the courtroom, but most of the time the bailiff was the one calling the cases and keeping anyone not involved in the case out of the courtroom.

**Worcester County: Hearing Procedures** - There are two judges in this county and it appears the CINA workload is evenly split between both of them. At the time of the site visits the judges had chosen not to use a master to hear CINA cases. No hearings were observed in Worcester County. According to the Court, most cases proceed by proffer as the parties have all talked extensively in advance of the hearing date and DSS is required to submit case summaries in advance. The judge interviews most children in chambers.

*Clerk's Office/Condition of Court Files* - The cases were mostly initiated through shelter care petitions which contained virtually no information except that the shelter care was needed. It was followed by a CINA petition that used boiler plate language without talking about the specific facts in the case or providing information about race, sex, age, parents, etc. The CINA petition was filed as much as a month after the shelter care petition. Children were sheltered for five days or more without a hearing in 10 of 14 cases. Interestingly, however, 11 of 14 cases were completed in three or fewer hearings with the longest being 6 hearings. Only three cases took longer than two months to reach disposition. The status of parents was infrequently discussed within the court files. Parents who did appear in court, though, were often represented.. Reasonable efforts findings were often missing, especially at hearings held after the shelter care hearing.

With regard to commitment, it was difficult to determine the court's intent in some cases. When children are returned home, without a commitment, the Department almost uniformly files a motion to terminate the court's jurisdiction and the files are then sealed. There was a case which went from shelter care through termination of parental rights in less than one year.

The Court monitors all the children in foster care through a monthly report sent by DSS. There are very few children in foster care in this county. The Court also knows all the players in the agencies (i.e. social workers, lawyers, etc.) and can make decisions in the cases based in part on past history and trust in the people appearing before them.

*Facilities* - No review of the facilities was conducted.

**Baltimore City: Hearing Procedures** - There are two judges and seven masters (recently two contractual masters were added) assigned to the juvenile court. One master is assigned to the CINA adjudicatory/disposition docket and one is assigned to the CINA review docket. One judge hears CINA contested cases and exceptions at any given time. The docket is divided into a morning and afternoon session every day. On a typical day each judicial officer hears upwards of 30 individual children's cases in a session. Each judicial officer varies somewhat in their practice for how to conduct the hearings. Most do a docket call early in the session to get a status report on each case. The status of many cases are unable to be determined at that time because key witnesses or parties have not yet appeared. Cases rarely begin to be presented to the court until one to two hours after the session begins. Most of the negotiation takes place in the hallways and tiny cramped waiting areas within the first floor of the courthouse.

The automated system in place in Baltimore requires groups of attorneys to huddle around computer work stations and attempt to reach agreements on these cases. Most attorneys are working on 5-10 cases at one time and have to go back and forth between their clients and opposing counsel. Once the case reaches the courtroom, the majority proceed by introduction of a computer generated stipulation. The attorneys identify themselves on the record and introduce their client, if present. Most judicial officers inquire as to the whereabouts of the parents and some judicial officers take steps themselves to locate missing parents. If a case is contested it is most likely pushed to the end of the docket or immediately postponed to a future date before the master or set on the judge's

docket. It is often difficult to get the next date in less than 30 days. Although the stipulations significantly decrease the time necessary to conduct the hearing the actual processing of the stipulation and generating the accompanying court order takes longer than it took to put the case on the record. If mistakes are in the order it takes even longer to fix. The positive aspect of this is all parties leave with a signed order (if the exception period is waived) which contains the date of the next hearing and the parent's notice to keep the court informed of their whereabouts.

Shelter care cases are rotated before different judicial officers each week. An average daily shelter care docket contains about ten cases and is split between two masters. Children are always represented by counsel, but the standards of representation vary because three different law firms are under contract to represent children as are some Court-Appointed Attorneys in Baltimore, and each office has different approaches among their attorney staff. The custodial parents have access to counsel through the Public Defender's Office, if they apply and are accepted, at all stages of the proceeding. The DSS is represented by in-house counsel. Most children are present in court and in the courtroom and many parents and other family members and witnesses appear at each hearing. There are sometimes as many as eight attorneys involved in a single CINA case: with multiple attorneys for siblings who have different positions, attorneys for different fathers, an attorney for the mother, DSS and persons who have intervened. Very few cases actually proceed to trial as they are either resolved during the course of the day or the efficiency of numerous postponements tend to wear the contesting party down.

*Clerk's Office/Condition of Files* - There is a separate juvenile court clerk's office in Baltimore City. There are a number of different clerks performing a variety of roles such as courtroom clerk, assignment clerk, hearing section, etc. Files are maintained in a separate room from the rest of the court. All juvenile cases are filed by a unique identifying number for each child. If a child has a delinquency and a CINA case or multiple CINA cases, all information is maintained in one file. Foster Care Review Board Reports and other ancillary documents are not included in the file nor are they placed in a separate file as in Prince George's County. The automated system is paperless. All docket entries, stipulations, motions, petitions, orders, etc. are generated on the QUEST system. Baltimore City has not been closing cases when children enter foster care and therefore the cases remained statistically open indefinitely.

*Facilities* - The Baltimore City Courthouse is a massive old building in need of constant repair. The juvenile court occupies the first floor, which used to be the basement. There are nine hearing rooms, sheriff's office, waiting rooms, offices for the Public Defender, Clerk's Office, juvenile detention area, and the court medical offices. An attorney may need to be in any of these rooms at any given time, as well as in one of the judge's courtrooms which can be located on any floor of the building or another building across the street. A good part of the day is often spent tracking other people down. The juvenile court waiting area is always bustling with activity. The CINA and delinquent children wait in the same area along with the defendants and perpetrators of acts that brought about the proceedings. A number of projects were initiated to attempt to renovate and enhance the waiting area to make it more inviting for children. Attempts to renovate the facility by creating a playroom equipped with toys for children has resulted in the disappearance and destruction of the toys limiting

the effectiveness of the area. There is now a "reading room" staffed by volunteers where children can come and read stories while waiting. There is quite a bit of waiting around as children and families wait to be interviewed, negotiate, hopefully have their case called, and wait for their orders. Although recently security officers were placed in all courtrooms, fights frequently break out in the hallways and in the courtroom as tempers flare. As stated earlier, the computers now used by the attorneys to generate stipulations are all crowded into a tiny 5 by 10 room filled with attorneys, social workers and witnesses. A few phone lines were installed by DSS to assist in communicating with absent witnesses, supervisors, and parties. There is virtually nowhere except stairwells for attorneys to have private conversations with their clients and children are forced to discuss serious issues like sexual abuse and suicide attempts with little privacy.

After many years of searching for an appropriate site, a new juvenile justice center is now being built with funding provided by the Department of Juvenile Justice. The planned occupancy date is late in the year 2000. It will house a juvenile detention facility as well as court facilities for CINA and delinquency cases and offices for the various involved agencies. The plans for the center include 13 courtrooms, three of which will be large, ceremonial courtrooms. Courtrooms will have up-to-date security features such as closed circuit television monitors and panic buttons, as well as a separate entrance for detained youth. The center will have two conference rooms, one with a capacity of 20. There will be four waiting areas: for the visitors of judges, for the visitors of masters, for attorneys and a large general waiting area. State witnesses and victims, CINA clients, and Office of the Public Defender clients will have waiting areas near the offices which they are associated. In addition, there will be two children play areas.

Similar observations of divergent practices of judges, masters, clerk's offices, attorneys and social service agencies were made in the other thirteen jurisdictions that were visited briefly during the assessment phase of the project. The following chart illustrates the diverse practices Statewide concerning which judicial officers are designated to hear CINA cases.

Which Judicial Officers are Primarily responsible for Hearing CINA Cases	JUDGE	COURT	MASTER/Court
Allegany	Judge	Circuit	
Anne Arundel			Master/Circuit
Baltimore City			Master/Circuit
Baltimore County			Master/Circuit
Calvert	Judge	Circuit	
Caroline	Judge	Circuit	

Carroll			Master/Circuit
Cecil	Judge	Circuit	
Charles			Master/Circuit
Dorchester			Master/Circuit
Frederick	Judge	Circuit	
Garrett	Judge	Circuit	
Harford			Master/Circuit
Howard			Master/Circuit
Kent	Judge	Circuit	
Montgomery	Judge	<b>District</b>	
Prince George's			Master/Circuit
Queen Anne's	Judge	Circuit	
St. Mary's			Master/Circuit
Somerset			Master/Circuit
Talbot	Judge	<b>District</b>	
Washington	Judge	Circuit	
Wicomico			Master/Circuit
Worcester	Judge	Circuit	

#### **Recommendation 4.1 - Creation of a New CINA Statute**

**Courts and Judicial Proceedings should be amended to create a new CINA statute that recognizes the distinct needs of child welfare cases. Comments regarding the construction of this statute should be elicited from all affected parties. Preparation of draft legislation should be completed in time for the 1999 session of the General Assembly.**

*As the findings demonstrate, the diversity of policies and procedures and the different interpretations of current legal requirements in CINA and TPR cases between the various jurisdictions lead to disparate treatment of litigants, difficulties as to the intent of the court order when cases are transferred between counties, and general confusion for practitioners and agencies around the state that practice in more than one jurisdiction. Uniform terminology, training, and accountability is greatly needed.*

*While the Committee on Juvenile Law of the Maryland Judicial Conference has, in the past, expressed reservations with previous efforts to design and implement a separate CINA statute, those reservations focused upon specific elements within the proposed legislation. Members of the Committee on Juvenile Law, have stated, in principle, that they are not opposed to the concept of a separate CINA statute.*

## TREATMENT OF PARTIES & FACILITIES

Attorneys were asked to respond to questions concerning the amount of time they spent at the courthouse and the amount of time they actually spent in the courtroom at each stage of the proceeding.

The length of the average noncontested shelter care hearing ranged from two minutes to three hours with an average of 15 minutes statewide. The average contested shelter care was ten minutes to five hours with an average of 45 minutes.

Attorneys stated they spent anywhere from two minutes to five hours at the courthouse for a noncontested adjudicatory hearing, with the average time being two hours statewide. The same range applied to the time spent in the courtroom, but the average time in the courtroom was less than 20 minutes. For contested adjudicatory hearings the range was 30 minutes to 32 hours at the courthouse with five hours being the average and courtroom time ranged from 30 minutes to 24 hours with the average being two hours. When compared by circuit the responses are displayed below

Circuit	Average Adjudication - At Courthouse NonContested/Contested	Average Adjudication - In Courtroom NonContested/Contested
First	30-60 minutes/0-2 hours	0-15 minutes/0-1 hour
Second	15-30 minutes/2-4 hours	0-15 minutes/2-4 hours
Third	30-60 minutes/2-4 hours	0-15 minutes/2 hours
Fourth	0-15 minutes/0-2 hours	0-15 minutes/1-2 hours
Fifth	2 hours/4-6 hours	15-30 minutes/2 hours
Sixth	2 hours/6 hours	15-30 minutes/2 hours
Seventh	2 hours+ /6 hours	15-30 minutes/2-4 hours
Eighth	2 hours/2-4 hours	15-30 minutes/1-2 hours

Attorneys stated they spent anywhere from eight minutes to 75 hours at the courthouse for a noncontested review hearing, with the average time being two hours statewide. The range of time spent in the courtroom was eight minutes to 25 hours, with the average time being less than 30 minutes. For contested review hearings, the range was 25 minutes to 16 hours at the courthouse with 3.5 hours being the average. In court time ranged from 33 minutes to 16 hours with just under 2 hours being the average. When compared by circuit the responses are displayed below.

Circuit	Average Review - At Courthouse NonContested/Contested	Average Review - In Courtroom NonContested/Contested
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First	0-1 hour/1-2 hours	10-15 minutes/30 minutes
Second	0-1 hour/2-3 hours	30 minutes/2 hours
Third	0-1 hour/3 hours	10 minutes/1-2 hours
Fourth	0-1 hour/2 hours	10 minutes/1 hour
Fifth	1-2 hours/3-4 hours	15-30 minutes/2-4 hours
Sixth	2 hours/3-4 hours	15 minutes/2-4 hours
Seventh	1-2 hours/3 hours	15 minutes/1 hour
Eighth	2 hours/3-4 hours	15-30 minutes/1-2 hours

The following chart examines the estimated amount of time per year allotted in each sample site for the hearing of CINA cases based on the number of filings in each jurisdiction and the amount of time allotted by the court for the hearing of CINA cases or TOTAL juvenile cases (if the court does not separate hearing times for delinquency and CINA cases).

	Average judicial hrs./week	Total juvenile or CINA only	Yearly hours (x 48 weeks)	Number of filings	Total time per case/per year
Caroline	3	Juvenile	144	163	.88 hrs
Calvert	3	CINA	144	153	.97 hrs
Harford	7.5	CINA	360	261**	1.38 hrs
Howard	3	CINA	144	146	.99 hrs
Montgomery	90	Juvenile	4320	6915	.62 hrs
Prince George's	14	CINA	672	1743	.38 hrs
Washington	4.5	CINA	216	363	.60 hrs
Worcester	3	Juvenile	144	316**	.46 hrs
Baltimore City	90	CINA	4320	5399*	.80 hrs

These figures are for comparison purposes only. The hours per week are based on the number of judicial officers, multiplied by a six hour day, divided by the number of days per month dedicated to these cases. This was then multiplied by 48 weeks. The number of cases was based on figures on number of original and reopened filings in Table CC-8 of the 1995-1996 Annual Report of the Maryland Judiciary.

\* The number of filings in Baltimore City was not derived from the Annual Report because the QUEST system did not report the majority of reopened cases in that jurisdiction. The numbers are based on estimates provided by a variety of different sources.

\*\* These courts file cases by family, not individual child.

#### **Recommendation 4.2 - Quality and Depth of Hearings**

**The Judiciary must consider some minimum standards of properly conducted court hearings, how court calendars can efficiently be managed, the minimum amount of time that should be dedicated to each case, and determine the court staffing and organization necessary to make the judicial process run smoothly. The joint committee, comprised of members of the Committee on Juvenile Law and the Committee on Family and Domestic Relations Law, in cooperation with affected agencies, should develop these standards.**

*The task force should convene before the end of 1997 and the findings should be presented no later than January 1999. Consideration should be given to utilizing the Standards set forth in the National Council of Juvenile and Family Court Judges (NCJFCJ) Resource Guidelines.*

**Resources:**

If there was one issue that was universally agreed upon by every participant in this assessment process, it was that regardless of what goes on in court, the key issue facing child welfare is the lack of appropriate and affordable resources for the treatment of children and families who are involved in the system. Whether it be drug treatment for parents, foster care treatment facilities for children, sufficient staffing ratios of social workers to families at the local DSS offices, appropriate caseloads for lawyers or sufficient numbers of judicial officers and clerk personnel to hear the cases, there is a need for more financial resources at all levels and for all agencies.

Two exhaustive studies of the service delivery program in Maryland have just been completed. One was the Review of the Maryland Child Welfare System conducted by the Child Welfare League of America.<sup>13</sup> This assessment was conducted over a nine month period in 1996 and involved extensive field interviews, review of case files and analysis of programs, policies and administrative structure. The role of the legal system, staff training and development and information management was also addressed. Over 100 specific recommendations were made in this study including six for the legal system. These included increased funding for legal services for the local departments and children and parents to address the large increase in court reviews, implementation of the new permanency planning legislation, changes in the process of contracting for legal services for children in Montgomery County, continuity of representation for all parties, permanency planning for children in kinship care, and cross-discipline training.

A task force chaired by Lieutenant Governor Kathleen Kennedy Townsend also did a long-term study of the Systems Reform Initiative,

which has made numerous recommendations about the service delivery system in Maryland.<sup>14</sup> The major recommendations are to enact a results-based system, expand local authority to determine needs, and create a State Commission on Children, Youth, and Families.

**Recommendation 4.3 - Judicial Involvement in the Systems Reform Initiative**

**Judicial Representation on the transition team that will continue the work of the Lieutenant Governor's Task Force, and the Implementation Committee of the CWLA Recommendations needs to be encouraged. A coordinated effort of all relevant participants in the child welfare process needs to be focused on developing a coordinated and integrated system that channels the appropriate resources to the direct services needed for Maryland's children.**

**Physical Facilities:**

*Results of Surveys* - The Administrative Judge in each county responded to a survey concerning court facilities. The results are as follows:

Facilities	YES	NO	NO ANSWER
Is there an area of the courthouse set aside for the hearing of juvenile cases?	12	10	2
Are there special areas for children to wait for their cases?	6	17	1
Do you provide private meeting rooms for attorneys and their clients when they are waiting for their court hearing?	14	9	1
Do you provide work rooms for social workers when they are waiting for court hearings?	11	12	1
Are there telephones available for social workers when that are waiting for court hearings?	20	3	1
Do you have a security officer present at all times during CINA proceedings?	20	3	1

*Site Visits* - A facilities review was conducted in each courthouse that was visited during the assessment. No courthouse contained a facility where children could wait for their cases to be called or for the parties to negotiate in private, with a few exceptions. In many ways, the majority of children waiting to appear in Maryland courts are treated no different than a criminal defendant and given no special consideration. Multiple respondents and multiple witnesses wait in the halls and negotiate in stairwells, just like everyone else. Little children who have been abused by an adult sit in the room with that adult and wait. Children who have been in foster care and who have not seen their families for months at a time, have nowhere to go to have some private time. Children who need foster care placements wait around the courthouse until someone else decides their fate and tells them where they are going to live.

#### **Recommendation 4.4 - Development of a Facilities Review Committee to study and develop a Model Court Facilities Plan**

**Those jurisdictions that house a separate juvenile court such as Baltimore City, Baltimore County, Anne Arundel County, Prince George's County and Montgomery County should ensure that there is a separate child friendly waiting room.**

**All court facilities should have a private area where case discussions can occur. This space should provide access to a telephone so that persons such as foster parents, teachers and treatment providers can be contacted, if necessary.**

*If you are looking for the juvenile court in many jurisdictions in Maryland, the best place to start is the basement. If you are looking for the "staff" you are often looking for one person performing many different functions. Masters may be located in different buildings, in borrowed offices rather than courtrooms, etc. There were very few jurisdictions that had a place for children to wait separate from the vast array of criminal defendants and other litigants. Some judges called one case at a time into the courtroom while in other jurisdictions any and all persons in the courthouse could come and go as they pleased. The juvenile court frequently operates as the "step-child" in the local court system. Facilities, particularly in urban areas, are often grossly inadequate and not designed to meet the needs of the court and the participants. (See Riley, M. Corridors of Agony: A review of Baltimore City Juvenile Court by Time magazine in 1992).<sup>15</sup>*

#### **REASONABLE EFFORTS**

Title IV-E of the Social Security Act (1983)<sup>16</sup> requires that for each child entering foster care to be eligible for federal matching funds there must be a judicial determination that continuation in the home is contrary to the child's welfare and that the agency has made reasonable efforts to prevent removal or to alleviate the need for removal and make safe return possible. This law requires that courts help assure that children will not be needlessly placed in foster care or left in foster care for long periods of time. The purpose of requiring a **judicial determination** of reasonable efforts is to help ensure the agency actually provides services to try to preserve families. The assumption is that the judge will not make a positive finding unless services are really provided. The federal law fails, however, to define what "reasonable efforts" means.

Although Maryland also does not define what constitutes reasonable efforts, CJ 3-815 states that "shelter care may only be continued beyond emergency shelter care if the court has found that continuation of the child in the child's home is contrary to the welfare of the child and whether the removal of the child from the child's home is necessary due to an alleged emergency situation and in order to provide for the safety of the child or reasonable, but unsuccessful efforts were made to prevent or eliminate the need for removal of the child from the home."

If the court continues shelter care on the basis of an alleged emergency, the court shall assess

whether the absence of efforts to prevent removal was reasonable. If the court finds that the absence of efforts to prevent removal was not reasonable, the court shall make a written determination so stating. [CJ 3-815 (f)(3)] The court shall make a determination as to whether reasonable efforts are being made to make it possible to return the child to the child's home or whether the absence of such efforts is reasonable. [CJ 3-815 (f)(4)]

At the disposition hearing, the court shall "make specific findings of fact as to the circumstances that caused the need for removal" [CJ 3-820(k)] .

Therefore, although not explicitly stated, reasonable efforts determinations should be made at all hearings where a decision regarding permanency planning is being made. The Permanency Planning for Children Project Advisory Committee of the National Council of Juvenile and Family Court Judges has recently issued a Statement of Good Practice Principles, which states "federal reasonable efforts language should be clarified...and new standards developed which would require that when reunification is no longer the goal that the agency is expected to make reasonable efforts to secure a safe and permanent placement in a timely manner."<sup>17</sup>

Survey responses from both the Judiciary and the advocacy community support the finding that judges never or rarely made written findings about reasonable efforts rather than simply checking off boxes on a form. Hearing observations supported this conclusion as well. File reviews conducted around the state revealed the majority of jurisdictions used form orders to satisfy the reasonable efforts requirements.

The language of those orders differed as some counties had a check-off that reasonable efforts were made while other jurisdictions had a choice of options such as reasonable efforts made, not made, not made because of the emergency nature of the proceedings or no determination made. There was almost never a case with a negative reasonable efforts finding. In some jurisdictions these forms were only used at shelter care and in a minority of jurisdictions they were non-existent. In a small number of jurisdictions, attorneys included a reasonable efforts finding in orders submitted to the court after a hearing. What was abundantly clear however, was that these orders are signed by the judge even though they actually heard no evidence concerning reasonable efforts.

By investing only a few more minutes in each hearing, judges could seriously inquire about the Department's reasonable efforts, thus laying a foundation for DSS to devise and review the permanency plan. Furthermore, by carefully reviewing prior efforts to help the family, the court can better evaluate both the danger to the child and the family's ability to respond to services.

#### **Recommendation 4.5 - Specific Reasonable Efforts Findings By Judiciary**

**The Judiciary should seriously inquire at every hearing about reasonable efforts by DSS and should find specifically that the state did or did not make reasonable efforts. In certain cases, the circumstances surrounding the judicial determination should be clearly delineated.**

#### **Recommendation 4.6 - Development of New State-wide Reasonable Efforts Forms**

**The Judiciary should develop a new statewide reasonable efforts document which contains sections that allow the judge to make written findings based on the evidence presented to them as to why reasonable efforts were or were not made. This form should be developed in consultation with DHR to ensure Federal IV-E funding requirements are satisfied.**

*Periodic audits of these forms will be conducted to ensure compliance with this requirement.*

*As of this writing the U.S. House of Representatives has passed H.R. 867, which includes language that states need not make reasonable efforts to keep or reunify children with their biological parents if the court has found the children were abandoned, tortured or repeatedly abused and that if reasonable efforts are not made or are discontinued, reasonable efforts shall be made to make a permanent placement for the child.*



## CHAPTER FIVE

### Timeliness and Case Management

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## INTRODUCTION

The jurisdiction of the juvenile court is, by its very nature, time bound. It does not apply beyond a legislatively specified age. Consequently, the court's total involvement with a youth occurs within the span of a ticking clock, and each day of processing time takes away opportunity for potential treatment. Time is of particular importance for juveniles. It brings almost daily changes in physical, emotional, and mental development. Juveniles are far less able than adults to anticipate the future and cope with delays. Also, the application of appropriate treatment dissipates over time.

In general, states have created shorter time limits for juveniles than for adults due to the belief that juveniles have an even greater need for swift resolution of their cases. In Maryland, specific time frames have been established for the processing of Child In Need of Assistance and Termination of Parental Rights cases.

### **TERMINATION OF PARENTAL RIGHTS CASES**

Concern has been expressed regarding the extent of delay in the adoption of children in foster care and the extent to which the process of terminating parental rights is responsible. Courts in Maryland are required

by statute, FL§ to rule upon a TPR petition within 180 days after filing. As can be seen from the following table, however, none of the eight surveyed jurisdictions in Maryland is in total compliance with this requirement.

Jurisdiction	Number of Cases Closed in the Fiscal Year	Number of Cases Reviewed	Percentage of Cases Completed Within 180 days
Anne Arundel	12	10	75%
Baltimore County	46	29	28%
Cecil	10	9	30%
Harford	28	21	39%
Montgomery	54	30	22%
Prince George's	84	42	69%
Washington	14	12	36%
Baltimore City	140	47	16%

### **CINA CASES**

#### **Adjudicatory Process**

Under Maryland law, continued shelter care pending the adjudicatory hearing may not be ordered

for a period of more than thirty days. [Rule 11-112.b.2]. If the child is in shelter care, the adjudicatory hearing shall be held within thirty days from the date upon which the court ordered shelter care [Rule 11-114.b.2]. Shelter care shall not be ordered for a period of more than thirty days unless an adjudicatory hearing is held with extension [CJ§3-815 (d)(5)][CJ§ 3-815 (d)(4)].

If the child is not in shelter care, the adjudicatory hearing shall be held within sixty days after the juvenile petition is served [Rule 11-114(b)(1)].

Federal Law

While federal law requires that procedural safeguards be provided to protect parental rights in the removal of a child from the parents’ home, it is not specific with regard to exact procedural safeguards (42 U.S.C. 675 (5)(C), 627 (a)(2)(B), 672 (d)).

NCFJC Guidelines

If shelter care is continued, a full adjudicatory hearing should be conducted within 45 days of removal (Child Dependency Benchbook....p. 204).

When a child is in emergency protective care, the adjudication should be completed within 60 days after the removal of the child, whether or not parties are willing to agree to extensions. Exceptions should be allowed only in cases involving newly discovered evidence, unavoidable delays in the notification of parties and unforeseen personal emergencies (Improving Court Practice...p.47).

Other States

Experience in many jurisdictions has shown that it is possible to conduct the adjudication within 60 days after removal of the child. Some jurisdictions set even shorter time limits (Improving Court Practice...p.47).

*To illustrate the compliance of selected Maryland jurisdictions with statutory requirements and national standards, the following table includes data on elapsed time from filing to disposition.*

Jurisdiction	Number of Cases	Mean Number of Days	Maximum Number of Days	Percentage Completed Within 60 Days
Calvert	24	120	354	41.7%
Harford	20	59.5	202	60%
Prince George’s	78	60.9	286	66.7%
Washington	34	59	357	69.7%
Worcester	10	100	331	50%

**Locating and Serving Parents**

Personnel from local departments of social services have expressed concern with the difficulty they

encounter in locating and serving parents, especially fathers. All parties within the TPR process have stated that such difficulty is one of the primary reasons for delay in TPR cases. It would appear that the best solution would be to establish paternity as early as possible in court proceedings.

### **Recommendation 5.1 - Early Establishment of Paternity**

**Courts and Judicial Proceedings should be amended to include a provision clearly allowing a finding of paternity in the CINA proceeding.**

#### **Scheduling of Hearings**

At present, no statutory provision exists that would accord TPR cases a higher priority in the scheduling of hearings than other types of cases. Given the priorities presently facing our courts, especially with regard to criminal cases, it is unlikely that TPR cases would be accorded greater attention unless the need for such priority was ably demonstrated to the Judiciary.

To meet this need, the Administrative Office of the Courts and the Department of Human Resources jointly sponsored a two-day training conference on CINA, TPR, and adoption cases. A primary portion of this conference was dedicated to illustrating the relationship between the needs of children, especially those of an adoptable age, and the role of the court in this process. As previously described in Chapter Two, such conferences and increased training should take place in the near future.

#### **Court Intervention**

Unlike criminal cases and domestic cases, where a court can use the prospect of dismissal to enhance the progress of court activity, the court has little recourse in attempting to enforce the timeliness of TPF and CINA cases. Clearly, dismissing a TPR action if it is not completed within 180 days would serve only to harm the child. The only effective option available to the court development of methods to monitor case progress effectively by carefully and concisely illustrating ongoing problems in case activity, thereby placing the court in a position to bring shortcomings to the attention of the appropriate parties.

### **Recommendation 5.2 - Collection of More Detailed Case Statistics - Introduction of Case Segments**

**In order to more closely monitor the progress of children under jurisdiction of the court, methodology should be developed for dividing each CINA and TPR case into segments of activity. This statistical package should provide administrative personnel with the capability to monitor effectively the progress of children in CINA, TPR, and adoption cases and, if appropriate, to take steps necessary to ensure that processing is not delayed inordinately.**

*In CINA actions, segments should include, but should not necessarily be limited to, emergency shelter care, the adjudicatory process, the disposition phase, and reviews. In TPR cases, segments should be triggered by such actions as the filing of the petition, issuance of the show case order, filing of a notice of objection, and scheduling of the trial date. In addition, in TPR cases, activities should be separated and grouped according to the affected parent.*

### **Recommendation 5.3 - Collection of More Detailed Case Statistics - Uniform Court System**

**At the direction of the Maryland General Assembly, the Maryland Judiciary has undertaken the process of developing and implementing a Statewide automation system. This system, called the Uniform Court System (UCS), is presently under development in the Juvenile Court of Montgomery County. Due to and in anticipation of UCS being migrated to other jurisdictions, initial attempts to collect more detailed case statistics should begin with UCS.**

### **Recommendation 5.4 - Interim Statistics**

**Pending full implementation of the UCS, alternative methods of data collection, featuring the methodology and possessing the technology to provide more detailed case statistics, should be considered by the Judiciary.**

Finally, since a child's concept of time varies with age, there is a need to consider the developmental needs of children, including the effect of abuse and neglect, in determining how courts should process these cases. Consideration should be given to utilizing case management systems that effectively differentiate between cases, taking into consideration the nature of the abuse and the age of the child.

## **DIFFERENTIATED CASE MANAGEMENT AND THE DEVELOPMENTAL NEEDS OF CHILDREN**

In its most general form, differentiated treatment of cases has been applied consistently throughout the development of the judicial system. Civil cases are processed in accordance with rules and statutory procedures that are clearly distinct from criminal cases. Juvenile cases also have procedures which are unique. Often, case types are segregated administratively by department or division. Ultimately, however, within these broad case types and even within individual case categories, the same procedures and time frames exist for every litigant regardless of their unique needs for different resolutions. Clearly, there is a distinct need to address the developmental needs of children within this context.

The following stages of development are based upon the theories of Erik Erickson. Although there are many other theories that describe the central tenets of child development, Erickson's remain prominent and can provide a broad illustration of how these issues interact with court timeliness.

### Infancy

The first psychological and social task in the life of an infant is to become attached to his or her parents (or other care givers). From this attachment, encouraged by parental bonding and the nurturing and safety it provides, the child learns to trust his or her environment. The ability to feel attachment to others eventually allows the child to internalize a sense of rules established by those caring adults, and the consequent sense of appropriate guilt when those rules are violated. However, the infant who does not receive a reasonable amount of physical and emotional stimulation may not grow adequately. "Failure to Thrive Syndrome" may develop wherein the infant may become withdrawn and depressed. As the child ages, intense anger may take over his or her behavior as he or she pushes for limit-setting and attention.

Yet "attachment" does not necessarily mean "love" in the conventional sense. An abused or neglected child may become attached to someone he or she dislikes because the feared sense of loneliness is greater than the anger and pain caused by the abuse. In addition, based upon what the parent tells the child, abuse is often experienced by children as a deserved action and, in time, the abuse becomes the way that the child receives attention and stimulation. Finally, it is rare that abuse is the only interaction between a care giver and a child. Positive interactions serve to reinforce the attachment, and once internalized, serve to establish the child's view of the world. Unless decisions regarding permanent placement of the child are made promptly, such a pattern is extremely difficult to change.

### Toddlerhood (ages 1-3)

During this period, the child begins to explore the world and develop a sense of self. Clear boundaries are needed with rules and regulations, serving to enforce principles of right and wrong. As self-consciousness develops, the child will begin to experience shame. As children typically feel responsible for the abuse, they often feel exposed and shameful upon its discovery. Compelling a child, during this period, to describe repeatedly the incidents of abuse in a succession of court proceedings serves only to add to the shame of the child and promote a feeling of being out of

control.

### Pre-school (ages 3-6)

Pre-school children face the difficulty of balancing the issues of initiative and guilt. Initiative is characterized by the ability to develop plans and take appropriate actions toward their completion. Initiative is also the child's way of purposely altering his or her environment. However, the curiosity required to undertake initiative may be severely limited by a sense of overwhelming guilt associated with child abuse. Often, too much guilt forces the child to rely almost totally upon parents and other authorities for direction and the child loses or never develops a sense of independence or self-reliance.

Usually, the perpetrator of the abuse explicitly and implicitly informs the child that he or she is responsible for the abuse. In addition, the perpetrator and possibly other family members accuse the child of destroying the family. To balance the development of initiative and guilt effectively during these years, the court should ensure that the child sees plans as possessing validity. This, in turn, allows children to perceive themselves as having a positive effect upon the world around them.

### School-age (ages 7-12)

Balancing the feelings of industriousness and inferiority is the primary psychosocial task of the school age child. The child's completion of tasks leads to a sense of industriousness and competence. This allows positive self-esteem to grow. Should feelings of inadequacy and inferiority develop, as often occurs in incidents of abuse, a child will experience a decreased desire to work cooperatively with others. Later in life, this situation can inhibit an adult's ability to function productively in the general work force.

When children enter the dependency system, it is easy for them to feel overwhelmed. The greater the number of changes they confront, the greater their inability to complete tasks and feel accomplished. Reducing the number of judicial officers encountered during this period in their lives and clarifying exactly what is happening to them and why it is occurring will increase a child's chances for achieving and maintaining a sense of industriousness and self-esteem.

### Adolescence (ages 12+)

As an adolescent attempts to define his or her role and personal identity, he or she tends to rely upon a sense of loyalty, often to external groups. The group's ideals and identity are important in creating a context for the child to grow. If, however, the adolescent's loyalty to the external group interrupts the development of an internal independent identity, there is a risk for imbalance and difficulty in forming secure intimate relationships in adulthood.

Courts need to be aware of these needs for loyalty. Ensuring a sense of psychological safety in the courtroom while providing consistent nurturing would help an adolescent to overcome an increased sense of alienation and rebelliousness.



### **Recommendation 5.5 - Differentiated Case Management**

**The Maryland Judiciary, in conjunction with the Department of Human Resources, and, if necessary, the Standing Committee on Rules of Practice and Procedure, should, upon implementation of Recommendations 5.2 through 5.4 develop and implement a Differentiated Case Management (DCM) system for abused and neglected children. Initial implementation should occur as a pilot. The DCM system would include time limits on processing children under the jurisdiction of the court, consistent with their needs as determined by correlations of their age, the nature of the allegations in the CINA action, and any other pertinent information. Inclusion of other aspects of case management relating to effective processing, such as alternative dispute resolution and drug treatment counseling, within the proposed DCM system, should be considered**

#### **Schedule of Implementation**

Developmental planning for the DCM system should occur concurrently with the planning for the implementation of recommendations pertaining to information supplied within the original petition and enhancements to the Uniform Court System.

#### **Budget**

As much as practicable, financing for implementation of DCM in the Uniform Court System should be provided from the implementation grant funds of the Foster Care Court Improvement Project. Additional avenues for funding sources, such as grants from private foundations, should be explored.

Finally, the proposed DCM system must make allowance for the reaction of local practitioners to proposed changes. A failure to consider the key variable of the 'local legal culture' is often cited by national experts as a fundamental problem when introducing new procedures and techniques of case management. As such, great care should be taken to consult all affected parties. Recommendations for improvements to the system, based upon the strengths of case processing particular to individual jurisdictions, should be encouraged and acted upon.

### **Recommendation 5.6 - Differentiated Case Management - Information**

**Courts and Judicial Proceedings should be amended to require attorneys representing the Department of Social Services to include age, sex, and race within both the Petition for Continued Shelter Care and the Petition for a Child In Need of Assistance.**

**Courts and Judicial Proceedings should be amended to require the attorneys representing the Department of Social Services to include, within the Petition for Guardianship with the right to Consent to Adoption or Long-Term Care Short of Adoption, the case number of the previous Child in Need of Assistance case.**

**Courts and Judicial Proceedings should be amended to require the attorneys representing the Department of Social Services to include, within the Petition for Adoption, the case number of the previous Termination of Parental Rights case.**

Information concerning the age, sex, and race of the child presently is required by provisions within Courts and Judicial Proceedings to be included within the Petition for Guardianship with the Right to Consent to Adoption or Long-Term Care Short of Adoption. Inclusion of the additional information recommended would allow the court to effectively differentiate between children according to developmental needs and to enable court monitors to link cases involving the same child.

**The Social Services Administration of the Department of Human Resources, in conjunction with the Maryland Judiciary, should develop and implement in the State Automated Child Welfare Information System and the Uniform Court System a Statewide allegation table. This table would be used by attorneys representing the Department of Social Services in the creation of Petitions for Continued Shelter Care and for Child In Need of Assistance. Each individual allegation would be assigned a separate identifying code within the computer systems.**

**The Maryland Judiciary and the Social Services Agency of the Department of Human Resources should develop and implement in the State Automated Child Welfare Information System and the Uniform Court System a method of uniquely identifying each child in the respective automated systems and, if applicable, a method of administratively grouping the children by family.**

#### **Processing Children Who Are In Danger of Committing Status Offenses**

**The Judiciary of the State of Maryland, as part of the development of a differentiated case management system, should examine the treatment of children (primarily older children) who have received a finding of delinquency but have been abandoned by their parents or caretakers and found CINA as a result. These “throw away children” should be the subject of revised court processes.**

Focus upon these CINA children may require a reassessment of the use of or Children In Need of Supervision, CINS, cases. Commonly referred to as status offenders, these are children who have committed an offense which would not be a crime if committed by an adult. These cases usually are brought by local school systems for children who are habitually truant. Interviews with judicial personnel reveal that very few of these cases are filed, primarily, it would appear, because the court does not possess an effective enforcement provision and the affected agencies do not dedicate programs specifically toward these children.

#### **Processing Younger CINA Children**

**The Judiciary of the State of Maryland and the Department of Human Resources, as part of the development of a Differentiated Case Management system, should carefully examine the treatment of young children in the foster care process. Time periods for case processing should be sufficiently shortened to ensure timely permanency planning.**

**Appendix A**  
**Improperly Coded Cases**

1. **Case #91078102** The date listed as the closing date (9/16/94) is actually the date of a guardianship review for some of the children involved in the proceeding. Those children were placed under an order of guardianship on 9/15/93, but the final sibling's case was not concluded until 4/27/95. **This case can still be included in the FY'95 statistics.**
2. **Case #92091056** A mandate from the Court of Special Appeals closed this case on 11/29/93 but the file was not closed until after a review hearing on 1/27/95. **This case should not be included in FY'95 statistics.**
3. **Case #92097064** A decree of guardianship for one child was entered on 3/10/94 and it was reviewed on 2/17/95. However the case was not concluded until 6/19/95 when the sibling's case was concluded. The civil case report lists the closing date as 2/17/95 but it should be 6/19/95. **This case can still be included in FY'95 statistics.**
4. **Case #92135037** The wrong year is entered in the Civil Case Report. It was closed on 5/11/94 rather than 5/11/95. **Therefore it should not be included in FY'95 statistics.**
5. **Case #92147065** The judge dismissed the case on 9/20/93 and denied a motion to amend on 10/26/93. The case was not closed until 6/30/95 without comment. **This case should not be included in FY'95 statistics.**
6. **Case #92272067** The decree of guardianship was entered on 7/19/93 but the file was not closed until after a review hearing on 8/26/94. **This case should not be included in FY'95 statistics.**
7. **Case #92318057** An appeal was noted and the writ of certiorari was denied on 4/18/95. The Civil Case Report lists the case as being closed on 12/16/94, which was the date of an earlier review hearing. **This case can still be included in FY'95 statistics.**
8. **Case #93196071** The decree was entered on 2/14/95 but the file was not closed until after a review hearing on 1/13/95. **This case should not be included in FY'95 statistics.**
9. **Case #94031003** A decree of guardianship was entered on 7/13/94 for one child but the sibling's case was not closed until 6/12/95. The Civil Case Report lists the earlier date of 7/13/94 as the closing date. **This case can still be included in FY'95 statistics.**

**APPENDIX B**  
**EXTENT OF ASSESSMENT INTERACTION**

Jurisdiction	Interviews				Questionnaires Returned							File Reviews	
	Judges	Masters	Clerks	Atty's	Judicial Officers				Clerks	Attorneys		TPR	CINA
					AJ	TPR	CINA	Master	CINA	TPR	CINA		
Allegany	1	☒	1	0	1		2	☒	1		1		
Anne Arundel	1	1	2	0	1	5	2	2	1	5	4	10	
Baltimore City	3	1	2	0	1	7	3	4	1	29	39	47	275
Baltimore Co.	1	0	2	2	1	3	2	2	1	7	8	29	
Calvert	1	☒	2	1	1		2	☒	1		1		20
Caroline	1	☒	1	2	1		1	☒	1		1		12
Carroll	1	1	2	0	1		0	1	1		1		
Cecil	1	☒	2	0	1	3	3	☒	1	6	2	9	
Charles	1	1	1	1	1		2	☐	1		2		
Dorchester	1	1	4	0	1		1	☐	1		0		
Frederick	2	☒	1	0	1		2	☒	1		4		
Garrett	1	☒	0	0	1		1	☒	1		1		
Harford	1	1	2	3	1	1	0	1	1	7	2	21	20
Howard	0	2	2	2	1		0	2	1		3		35
Kent	1	☒	1	0	1		1	☒	1		1		
Montgomery	3	☒	2	4	1	4	3	☒	1	10	7	30	63
Prince George's	2	1	3	0	1	3	8	1	1	11	15	42	78
Queen Anne	0	☒	2	0	1		0	☒	1		1		
Saint Mary's	1	1	0	0	1		1	1	1		1		
Somerset	1	0	1	0	1		1	☐	1		3		
Talbot	1	☒	1	0	1		1	☒	1		1		
Washington	3	☒	2	1	1	3	2	☒	1	4	1	12	33
Wicomico	1	1	2	0	1		2	☐	1		1		
Worcester	1	0	1	0	1		2	☐	1		1		14
<b>TOTAL</b>	<b>30</b>	<b>11</b>	<b>39</b>	<b>16</b>	<b>24</b>	<b>29</b>	<b>42</b>	<b>14</b>	<b>24</b>	<b>79</b>	<b>101</b>	<b>200</b>	<b>550</b>

☒ Indicates no masters in that jurisdiction handling CINA cases.

☐ Indicates masters began hearing cases after the questionnaires were due.

Shading indicates those jurisdictions in which intensive file reviews were not conducted and no TPR questionnaires were sent.

These figures do not include numerous phone calls, face to face conversations and written communication with a variety of judicial officers, attorneys, court personnel and interested participants in the CINA/TPR process.

## Endnotes

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4. IJA-ABA, Standards Relating to Counsel for Private Parties (1978).
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6. American Bar Association, Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases (1996).
7. Legal Representation to Children in Maryland Child in Need of Assistance (CINA) Cases: A Preliminary Report by the Maryland Legal Services Corporation (October 8, 1990).
8. Governor’s Commission on Legal Services Contracts: Final Report (1992).
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11. ABA Standards L-2.
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14. Child Welfare League of America, Review of the Maryland Child Welfare System (1996).
15. Final Report of the Governor’s Task Force on Children Youth and Families Systems Reform, Lt. Governor Kathleen Kennedy Townsend, Chair, (November 1996).
16. Riley, M., Corridors of Agony: A Review of Baltimore City Juvenile Court, Time (January 27, 1992).
17. Social Security Act §§ 427 (a) (2) (B), 471 (a) (16), 475 (5) (c), 42 U.S.C.A. §§ 627 (a) (2) (B), 671 (a) (16), 675 (5) (c) (1983).